

# OMNIBUS TERRITORIES AND PALAU AGREEMENT

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## HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

TO

CONSIDER S. 1237, THE OMNIBUS TERRITORIES ACT OF 2013 AND S.  
1268, TO APPROVE AN AGREEMENT BETWEEN THE UNITED STATES  
AND THE REPUBLIC OF PALAU

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JULY 11, 2013



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## **OMNIBUS TERRITORIES AND PALAU AGREEMENT**

**THURSDAY, JULY 11, 2013**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:40 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Ron Wyden, chairman, presiding.

### **OPENING STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON**

The CHAIRMAN. The committee will come to order.

Today the committee meets to consider S. 1237, the Omnibus Territories Act and S. 1268, a bill to approve the September 10, 2010, agreement between the United States and the Republic of Palau.

We have with us the delegates from each of the territories, the Resident Commissioner from Puerto Rico and Eileen Sobeck from the Department of the Interior for our first panel on S. 1237.

Ms. Sobeck will also appear on the second panel along with Vikram Singh from the Department of Defense and Edgard Kagan from the Department of State to discuss the Palau agreement.

Good morning to all of our witnesses. We welcome you.

Let me just say a few words about S. 1237, the Omnibus Territories Act. The committee has jurisdiction over matters relating to the territories of our country. However because the territories are not represented in the Senate, few legislative proposals dealing with the territories are introduced here.

That's why Senator Murkowski and I have asked Congressman Sablan to round up legislative proposals from the territories and send them to us. Senator Murkowski and I have introduced those proposals as S. 1237, the Omnibus Territories Act. Congressman, we thank you for your cooperation with us.

Senator Murkowski and I have introduced the bill by request. As many of the Senators know introducing a bill by request is a courtesy that Senators usually provide to the Executive branch. However, it can be extended to others. We're happy to be able to do so.

It also means that Senator Murkowski and I are not endorsing the bill or expressing support today for all of its provisions. We merely offer it for consideration at the request of others, in this case the elected representatives of the various territories.

The Omnibus Territories Act contains a wide variety of proposals. Some have been considered by our committee before. Others are new.

Some are a bit controversial. Others have significant support.

Let me just talk for a minute about two of the proposals.

Section 12 of the bill, the Guam War Claims Act has come before the Senate a number of times in different forms. It has been controversial. It certainly has a high cost.

Few would deny the extraordinary heroism and steadfast loyalty of the citizens of Guam during World War II. Many were subjected to forced labor, tortured, raped and killed by Japanese military forces, often simply because they were Americans. However, as I touched on, the cost of the payment of reparations to the victims and survivors has made this a bit of a challenge to get the bill passed.

But the Congresswoman is here, Ms. Bordallo. I hope I'm pronouncing that right. Again, we welcome her.

She's tackled the issue by providing a creative way to pay for the proposal. The Guam War Claims would be paid using Guam tax dollars that are normally sent to Guam's treasury. So this is a creative offset, certainly. Hopefully this will bring Senators and colleagues together with respect to the cost issue.

One of the new proposals in the bill, section 9, the Temporary Heating and Energy Assistance to the Virgin Islands, a provision designed to help those who have been hit hardest by the significant spike in electricity prices on the Islands. When the oil refinery on St. Croix closed last year, the Islands faced something of a double whammy where they were hit with big job losses and a huge increase in the cost of electricity. The economy of the Islands has been devastated.

Congressman Christensen has been doing a lot of hard work on this. The Governor has. The Departments of Interior and Energy and local leaders have all been toiling diligently to address this economic disaster.

They've been working to install a variety of renewable and traditional energy sources and increase efficiency. So a lot of people talked about all of the above in terms of energy policy. Congresswoman, I know you really are practicing it.

It's going to take several years for these measures to provide relief. In the meantime, the Congresswoman is proposing that the Virgin Islands receive a greater share of Low Income Home Energy Assistance Act dollars. She proposes that eligibility be expanded to individuals with income up to 300 percent of poverty. These would be temporary measures, in effect, to get the Virgin Islands through the disaster. We are anxious to hear from the Congresswoman about her proposal.

One other point, just a few words about S. 1268, to approve the September 10, 2010, agreement between the United States and Palau. This agreement certainly has significant strategic value to our country. We're anxious to hear from the Pentagon and the Department of State on those matters this morning.

It's hard to place a dollar value on an unsinkable aircraft carrier in the Pacific, unchallenged authority over a huge swath of the ocean and a steadfast international ally. But we do know the cost,

\$175 million by the way, of one F-35 fighter jet. So it is hard to overstate the value and strategic necessity of approving an agreement.

I hope the Administration will continue to work with the committee to find an acceptable offset for the Palau agreement so that America can address an important national security issue.

My friend and colleague, Senator Murkowski, is here. I want to let her make whatever statement she chooses.

[The prepared statement of Senator Risch follows:]

PREPARED STATEMENT OF HON. JAMES E. RISCH, U.S. SENATOR FROM IDAHO,  
ON S. 1237

I would like to note my strong opposition to Section 7 of S. 1237, as introduced on June 27, 2013 and as considered by the Committee today. That section would require the Government of the U.S. Virgin Islands to hold a referendum on whether the Federal government may establish an unelected Chief Financial Officer (CFO) for the Territorial government. The provision then sets out a Rube Goldberg-type of process whereby a CFO would be identified and selected. The provision is strongly opposed by the Governor of the U.S. Virgin Islands.

As a former governor, I cannot imagine a more unwieldy and unnecessary intrusion into the local self-governance of the Virgin Islands. Apart from the questionable merits of establishing a new bureaucracy to replicate the existing duties of the Territory's executive branch, I believe the proposal sends the wrong signal that the Territory is incapable of self-governance and that the Federal government must somehow intervene to settle local disputes. Indeed, it would appear to violate the principles of federalism and to be a step backwards, not forward, in the Territory's path to greater self-governance. Certainly no governor of any State of which I am aware would tolerate federal legislation requiring (or even permitting) the establishment of a CFO in their respective States.

If the people of the Virgin Islands believe that a CFO would be useful or beneficial, they are certainly free to require the same, through local referendum or local legislation. They do not need Congress to tell them what to do or how to do it.

#### **STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. Good morning to each of you. Thank you for your representation in your respective regions. We welcome you to the committee here this morning.

Mr. Chairman, I want to thank you for holding the hearing on two pieces of legislation that impact the territories and the freely associated states. As you have recognized, this is an area of a committee's jurisdiction. It probably doesn't generate as many headlines as some of the other issues that we take up. But nonetheless, very important to our Nation's economic and clearly, physical, security.

So it is an important issue, a series of important issues, that we address today.

The first bill, the Omnibus Territories Act of 2013, 20 sections contained within it and really a very wide range of issues, going everywhere from the minimum wage to HUD programs to fisheries, endorsements and everything in between that may impact the territories both individually and collectively.

As you note, Mr. Chairman, this bill was introduced by request. We have made some changes to the bill compared to what was introduced over on the House side. I anticipate that we're probably going to see further changes as we move forward with this. I look forward to working with each of the delegates on these matters.

With respect to the second piece of legislation and this is the agreement between the United States and Palau. I do thank the Administration for transmitting the language to Congress so that it could be included in this hearing. I'm not going to go into all the details relating to the compact of free association between our two nations.

But as a result of the very close and strategic and economic ties between our countries and our peoples, hundreds of Palauan citizens serve in all branches of the United States Armed Forces. We greatly appreciate their willingness to serve in our Nation's military. In some cases, giving their lives to defend our freedom.

Palau is a steadfast ally of the United States in international forums who support we should be mindful of and grateful for. Palau, along with Israel, votes with the U.S. in the United Nations more times than any other member. It's also important to recognize Palau's leadership in working with the U.S. to resettle 6 ethnic Uighurs, who were detained at the Guantanamo Detention Facility. Palau was the first country to offer itself as a future home for these detainees.

So as we deal with the issue related to the compact, the key question really is how to pay for it. This has been unresolved since the agreement was signed back in 2010. I am not aware of any policy objections to the agreement but I also acknowledge that, in my view, we have not yet seen an acceptable offset to the agreement's cost. So I'm hopeful that this morning we will hear from the Administration witnesses some politically viable ways to move this very important agreement forward.

So I look forward to the testimony this morning from those who are assembled, both not only on this first panel, a very distinguished panel, but on our second panel as well.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

I know we're going to work very closely together on these issues as we have on all of the matters that have come before us.

Let's go to our witnesses now.

We all know him as Eni, but certainly the Congressman, the American Samoa Delegate to Congress, has been doing good work for his communities for quite some time. He is Congressman Faleomavaega.

He will be at the witness table with the Honorable Donna M. Christensen, who we know from health care days and appreciate her good work.

The Honorable Madeleine Bordallo, we welcome her.

The Honorable Gregorio Sablan of the Northern Mariana Islands Delegate to the Congress.

The Honorable Pierluisi, a Resident Commissioner of Puerto Rico, welcome and Eileen Soback.

We'll make all of your prepared remarks a part of the record in their entirety. I know there's always, kind of, a biological compulsion to just read a statement. We'll make your entire statement in the record in its entirety.

If you'd just like to speak with us for 5 minutes or so that will leave some extra time for questions.

We're also pleased that Senator Risch is here as well.

Congressman, welcome.

**STATEMENT OF HON. ENI F. H. FALEOMAVAEGA, DELEGATE  
TO CONGRESS, AMERICAN SAMOA**

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Thank you Member Murkowski. It's an honor and a pleasure for us to be here this morning.

I want to take this opportunity to thank you for holding this hearing on S. 1237, the Omnibus Territory's bill. This bipartisan legislation is critical in addressing the many issues that residents of our U.S. territories have faced for many years. For American Samoa this bill would provide the necessary tools for our new Administration to help the territory move forward.

Mr. Chairman, I realize that I have a laundry list of about 100 issues that I wanted to share with you this morning. So I decided to cut it down to 5, if that's alright with you.

I'd, just to say on the general basis. By the way some of your colleagues are wondering why is it we're making this approach in settling some of the issues affecting the territories. In actuality this was the procedure that Congress had set years ago. I remember the 1970s on a bipartisan basis, especially in the House with the late Congressman Phil Burton and Lloyd Meeds and Patsy Mink and on the Republican side our colleagues Pablo DeMarcino and Don Clausen. They worked in such a way that in these issues.

The CHAIRMAN. Congressman, the Senators up here on this panel still believe in working just that way.

Mr. FALEOMAVAEGA. OK.

The CHAIRMAN. I appreciate your pointing out this history of bipartisanship.

Mr. FALEOMAVAEGA. Yes and that really was the spirit. I'd say look, so many of the issues affecting the territories are so municipal. This will affect the national framework in terms of some of the issues because there may be instances we get lost in the shuffle in many instances by oversight and not intentionally in any way.

So these territories always are caught in that and we try to clean up the mess. I shouldn't say really the mess, but the problems that it's created. So there have been several examples where omnibus territories build it.

I realize when it comes to committee jurisdictions there's a little problem with the sensitivities and how we do it. But all of this was done on the basis of trust and that our Republican/Democratic colleagues worked in such a way that these issues are non controversial, for the most part. Each issue affects that particular territory.

All we need is just a little twitch and it's settled. But you have to go through the whole legislative process. Sometimes you never get heard.

So I want to thank you, Mr. Chairman and Miss Murkowski, for being able to work this procedure again as a possible way to solve so many issues. As you notice we all have different issues affecting the different territories because we're not all from the same tribe. Our political relationships with the United States are also quite different.

So I want to say that I really want to thank you for this initiative. Then hopefully that we can go through with this procedure

and see what we can agree upon and move forward so it will be a great help to the territories.

We've got a problem with the cost ratio studies. So in many instances I have a ten thousand foot runway airport but no airport tower because the FAA said you don't qualify for the cost ratio, whatever formula that they have. I say, how am I going to run an airport that doesn't have a tower? Yet we built a ten thousand foot runway that 747s can't fly on.

I think that we should actually there at the Asiana airport. I mean, Asiana Airlines there at San Francisco is an example when you're talking about safety and hazards as far as the air transportation. We need this cost study ratio.

The other is it also affects the construction of our harbors as I'm sure that all of territories are affected in that regard.

We also have a problem of local matching. For 30 years we've been struck with the fact that you can only go up to \$200,000. The cost of living, the increases in inflation and all of this has changed. Yet Congress still has not given us any assistance in that regard.

The GAO study, we have 18 minimum wages, Mr. Chairman. For our little territory, we have 18 minimum wages. How in the world did we create an idiotic system like this? Thanks to our partners in the Federal Government and the Department of Labor we ended up with 18 minimum wages.

We'd like to have a GAO study to see if we can have just maybe one minimum wage so that everybody will be on the same even playing field. That's another problem we have.

The CHAIRMAN. Way too logical, Congressman.

Mr. FALEOMAVAEGA. Another question that we've just had. A problem with some of our residents have decided to file a lawsuit demanding that our people should become automatically U.S. citizens under the 14th Amendment Citizenship clause. They lost the case.

But what I wanted to present here was to offer as a plebiscite so that our people could decide once and for ever this has been an issue that has been ongoing for over 100 years simply because of our concerns with our traditional ways that it may have an impact on the culture and all of that. I'm offering this idea of maybe a plebiscite. Leave it to the people and not to the courts to decide whether we should become U.S. citizens.

Mr. Chairman, I could go on for the next half day to give other details. But I want to thank you. I'm sure my colleagues will be just as good in giving their concerns on this.

Thank you.

[The prepared statement of Delegate Faleomavaega follows:]

PREPARED STATEMENT OF HON. ENI F. H. FALEOMAVAEGA, DELEGATE TO CONGRESS,  
AMERICAN SAMOA, ON S. 1327

Chairman Wyden & Ranking Member Murkowski:

I want to take this opportunity to thank you for holding this hearing on S. 1237, the Omnibus Territories Act. This bipartisan legislation is critical in addressing the many issues that residents of our U.S. territories have faced for many years. For American Samoa, S. 1237 will provide the necessary tools for Governor Lolo and his new administration to help the Territory move forward.

## SECTION 15. BENEFIT TO COST RATIO STUDY FOR PROJECTS IN AMERICAN SAMOA

Included for American Samoa is a section requesting the Comptroller of the United States to study and provide a report on the benefit-to-cost ratio formula used to determine funding for federal projects in American Samoa. This comprehensive study is necessary to address the discrepancies that American Samoa faces compared to other Territories. Due to our remote location, small population and single-industry economy, it is very difficult for American Samoa to meet any threshold for federal projects, especially federal agencies and departments that rely solely on the benefit-to-ratio formula.

Because American Samoa does not meet the criteria, which I believe is discriminatory, American Samoa is the only U.S. territory without an airport tower even though American Samoa is an international destination and has one of the longest runways in the U.S. While making tourism a priority, it would be difficult for the local government to attract foreign carriers provided the airlines would not be comfortable with their planes landing at an international airport that does not have a physical control tower. Given the recent Asiana crash landing at San Francisco International Airport last week, a responsive and communicating physical presence is also essential to our residents.

The benefit-to-cost ratio also affects our harbors. For now, we are unable to qualify for federal support for additional harbors but, with the increase in traffic in the Pago Pago harbor, building and creating harbors on other parts of Tutuila Island will improve and expand inter-island commerce and build-up needed infrastructure.

Having a GAO study to determine alternative methods to the benefit-to-cost ratio will help Congress better understand and provide for one of our most vulnerable communities.

## SECTION 16. WAIVER OF LOCAL MATCHING REQUIREMENTS

I am in strong support of waiving local matching requirements for non-competitive grants received by our U.S. territories. Currently, federal departments and agencies that provide grant funding to the Territories are able to waive local matching requirements. Congress intended to waive such requirements in order to help support the local governments with improving infrastructure and programs. The current amount waived of \$200,000 has not changed since 1983 when the Congress decided to increase it from \$100,000 to \$200,000.

It is very unfortunate that the amount waived has not been increased even with inflation and the higher cost-of-living in the U.S. Thirty years later, our U.S. territories continue to struggle to provide for their residents given the global recession that affected all of us within the past 10 years. With the current push for reduction in federal spending, it will make it even far more difficult for our Territorial governments to provide for their residents.

## SECTION 17. FISHERY ENDORSEMENTS

While the language for this section may need to be revised, the intent of the language is to restore fishery endorsements to U.S. tuna boats that are 100% U.S. built, 100% U.S. owned, and that offload the majority of their fish in American Samoa.

We have some tuna boats that meet the above criteria but which have lost their fishery endorsement because they were repaired in a foreign shipyard meaning these boats are no longer permitted to fish in the U.S. EEZs in the South Pacific Tuna Treaty Area. This language corrects this problem and allows these vessels to fish where all other 100% U.S. built tuna boats are allowed to fish.

This fix is critical to our economy because these boats supply the majority of their fish to American Samoa's canneries and, as this Committee knows, American Samoa's economy is a single-industry economy which is almost entirely dependent on the U.S. fishing and processing industry.

I also want to add that this legislative fix does not affect Hawaii waters or waters in the mainland U.S. The waters related to this language are restricted to U.S. EEZs within the South Pacific Tuna Treaty Area.

I might also add that the original law which required that U.S. boats to be repaired in U.S. shipyards if they want to retain their fishery endorsement has been in force since 1956 to protect the U.S. steel industry. I believe the law is somewhat antiquated.

## SECTION 18. EFFECTS OF MINIMUM WAGE DIFFERENTIALS IN AMERICAN SAMOA

The Fair Labor Standards Act of 1938 was amended in 1956 to exempt the tuna industry from paying workers in American Samoa in accordance with federal min-

imum wage laws. Consequently, Special Industry Committees were established to determine wage rates in American Samoa.

From then to now, American Samoa to date has 16 different wage rates based on industry classification including retailing, tour and travel services, fish canning and processing, publishing, private hospitals, government employees, etc. , although the original intent of the law was for wages among industry classifications to mesh into one.

I believe the time has come for us to set this matter right because I feel it is discriminatory to pay some minimum wage workers less just because they work in the hotel industry, for example, versus the tuna industry. I believe anyone in American Samoa should have access to a set minimum wage rate because the cost of living is the same for all workers across industry sectors.

A GAO report on the effects of minimum wage differentials in American Samoa will help us determine how we can best proceed to make the necessary corrections for the benefit of our workers.

#### SECTION 19. AMERICAN SAMOA CITIZENSHIP PLEBISCITE ACT

The citizenship plebiscite provision in the Senate Territorial bill will provide for a federally authorized plebiscite in American Samoa on the question of citizenship. The U.S. District Court for the District of Columbia reaffirmed just last month in the case of Tuaua v. U.S. that Congress has the plenary power to grant citizenship to persons living in the U.S. territories. The plaintiffs in Tuaua argued that U.S. citizenship should automatically apply to anyone born in American Samoa.

The decision to become U.S. citizens should be decided by the people of American Samoa by an election. Once the decision is made by a majority of American Samoan voters to become citizens, I will work with my colleagues in Congress to draft legislation to provide citizenship to persons born in American Samoa.

American Samoans have been struggling with the question of citizenship for over 70 years, and the time has come for the people to decide whether they want to become U.S. citizens. If we choose to do nothing, outside forces will decide our future for us, as is the case in Tuaua.

The decision for American Samoans to become U.S. citizens has been complicated because of concerns of the impact of citizenship on our traditional way of life. However, history has shown examples of other U.S. territories that have preserved their traditional culture and still receive citizenship by an act of Congress.

I am hopeful Congress will enact this important provision to allow the American Samoan people to decide whether they want to become U.S. citizens.

#### CONCLUSION

Chairman Wyden and Ranking Member Murkowski, I want to thank you again for holding this hearing and for allowing me to testify before the distinguished committee. I look forward to answering any questions you or members of the Committee may have.

The CHAIRMAN. Congressman, thank you for an excellent statement and particularly your emphasis on bipartisanship. More than anything that's what the 3 of us have tried to do in this committee because without it we don't get anything done.

Mr. FALEOMAVEGA. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for your thoughts on this. Congresswoman, welcome.

#### STATEMENT OF HON. DONNA M. CHRISTENSEN, DELEGATE TO CONGRESS, U.S. VIRGIN ISLANDS

Ms. CHRISTENSEN. Thank you.

Good morning, Chairman Wyden and Ranking Member Murkowski, members of the committee. I deeply appreciate the effort and time Chairman Wyden, Ranking Member Murkowski and your staff put into making both the Omnibus Territories bill and this hearing a reality. I'm very pleased that S. 1237 includes 5 provisions that originated in bills I introduced in this and previous Congresses.

Sections 6 and 9 would address a crisis in the cost of electricity facing my constituents. Our current average cost of 50.8 cents for residential and 54.8 cents per kilowatt for commercial customers threatens Virgin Island's families and adversely impacts businesses causing closures, downsizing and job losses.

Section 6 seeks long term sustainable solutions for the problem of high energy costs and cost of fuels for all of the insular areas.

Section 9 would provide more immediate short term relief to Virgin Islanders over the next 18 months while the local public utility believes they will be able to reduce the cost of electricity by 30 percent by that time.

Section 10 would establish the Castle Nugent National Historical Site. This continues an effort I began in 2006 to continue the great precedent set by our forefathers when Yellowstone became the first national park. It would become the fourth National Park Service unit on St. Croix and provide an excellent opportunity to preserve a very special and unique landscape for the people of St. Croix and visitors to the Islands for generations to come.

The bill calls for preservation of 29 hundred acres which include a Caribbean dry forest, pristine coastal barrier coral reef system and pre-Columbian and post-European settlements. The property also has a long agricultural history dating back to the 1730s.

Section 11 would establish a St. Croix National Heritage Area. The St. Croix National Heritage Area will play an important role in the revitalization of St. Croix where we lost the HOVENSA refinery and its towns and neighborhoods. It will be a key part of strategic economic development for the entire territory.

It has been a top priority of mine for over 10 years. I am therefore hopeful and encouraged that S. 1237 could be the catalyst to finally make it a reality.

Last, but not least in the bill it includes my legislation, H.R. 85, to establish a Chief Financial Officer. I first introduced this legislation to create a Chief Financial Officer for my district, the U.S. Virgin Islands in 2003 at a time when because of lack of accountability the Federal Government was either taking control of Federal funds or placing them under a third party judiciary. The then Governor was warning of layoffs, payless paydays and reduced services.

The bill to create the Chief Financial Officer was my response. In recent years we've experienced layoffs, salary cuts and reduced services, ongoing budget shortfalls and austerity measures. So I feel it's still needed.

The bill was revised in the 111th Congress so that the CFO would now simply certify the revenue of the territory mirroring that of the then work of the CFO in the District of Columbia. I expect it to pass the House for the fifth time later this month.

It won't solve the fiscal problems we are facing. But it will pave the way for us working together to resolve them as we all will trust the numbers and be clear on where we are financially. If the best that I can achieve is a referendum, I'm willing to accept that and let the people voice their will. I can see no reason why anyone would object to that or to the establishment of better accountability and transparency in the finances of our government or any government.

In response to one point of opposition I do not see how this bill could be considered an imposition of the will of the Congress on local authority. It is legislation introduced by the representative of the people of the Virgin Islands. Further there are many times that Congress has been and will continue to be called on to act on behalf of the Virgin Islands because we're still governed by an act of Congress, the Revised Organic Act of 1954.

In closing I would request a consideration of adding two more of my bills as S. 1237 moves forward.

The first bill is H.R. 374 which seeks to create an innovative pilot program to leverage private pension assets to raise revenues for both the Federal Treasury and investment in the Virgin Islands. It would creatively address the chronic underfunding of infrastructure needs in the Virgin Islands to a dedicated source of revenue and it would reduce our unemployment. We think it is likely to raise approximately \$500 million a year for the Federal Treasury.

The second bill, H.R. 79, would tie the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa to the highest FMAP applicable to any of the 50 States consistent with our average income levels. The language was passed in the House version of the Affordable Care Act and it has no budget impact.

So I'd like to thank you once again, Chairman Wyden and Ranking Member Murkowski for scheduling this hearing today and for the opportunity to testify.

I have two letters of support.

One from Senator Craig Barshinger, who is chairman of the committee on Energy and Environmental Protection of the Virgin Islands Legislature.

One from the League of Women Voters in the Virgin Islands that I'd also like to enter as testimony for this hearing.

I look forward to answering any questions.

[The prepared statement of Delegate Christensen follows:]

PREPARED STATEMENT OF HON. DONNA M. CHRISTENSEN, DELEGATE TO CONGRESS,  
U.S. VIRGIN ISLANDS, ON S. 1237

I want to begin by thanking you Chairman Wyden and Ranking Member Murkowski for the friendship you have shown to the residents of the Insular Areas and their representatives in the House with the introduction of S. 274 and the scheduling of this hearing today. My Colleagues and I deeply appreciate the effort and time you and your staff put into making both, the Omnibus Territories bill and this hearing a reality.

Mr. Chairman, I am pleased that S. 1237 includes five provisions that originated in bills I introduced in this and previous Congresses. The first and third provisions of the bill. Sections 6 and 9, were included in legislation I sponsored last December to address a crisis in the cost of electricity facing my constituents. The current average cost for residential customers in the Virgin Islands is 50.8 cents per kilo watt hour and 54.8 cents for commercial customers. These high costs threaten Virgin Islands families at all income levels but especially low income. It also adversely impacting businesses causing closures and downsizing.

Section 6 is intended to look for long term sustainable solutions to the problem of high energy cost from fossil fuels for all Insular Areas. Section 9 on the other hand, is intended to provide immediate "short-term" relief to Virgin Islanders over the next 18 months when the local public utility believes it will be able to reduce the cost of electricity by 30%.

Section 10 and 11 of the bill deals with legislation I sponsored to bolster and give a boost to the tourism based economy of my home island of St. Croix.

Section 10 relates to the establishment of Castle Nugent National Historic site. Introduction of this bill continues an effort I begun in 2006 to continue the great precedent set by our forefathers when Yellowstone in Wyoming became the first national park. The establishment of the Castle Nugent Historic Site would provide an excellent opportunity to preserve a very special and unique landscape for the people of St. Croix and visitors to the island for generations to come.

If designated, the Castle Nugent Historic Site would become the fourth National Park Service unit on St. Croix. A special resource study authorized in 2006, has determined that the site meets criteria set by the NPS to determine national significance, suitability and feasibility. The bill calls for the preservation of 2,900 acres which include a Caribbean dry forest, pristine coastal barrier coral reef system and a pre-Columbian and post-European settlement.

In addition to guaranteeing the protection of one of the most ecologically sensitive areas on the island, H.R. 3726 also preserves a rich part of our historical and cultural past, by preserving the archaeological remains of our indigenous Native American inhabitants. The property has a long agricultural history dating back to the 1730s, when the Danish estate house, now listed on the National Register of Historic Places, was constructed.

Section 11 would establish the St. Croix National Heritage Area on St. Croix, U.S. Virgin Islands, which would provide us with a great opportunity to showcase and expose St. Croix to the world. According to a 2009 national research study on U.S. Cultural and Heritage Travel by Mandela Research, 78% of all U.S. leisure travelers participated in cultural and /or heritage activities while traveling. And these travelers spend more, \$994 per trip compared to \$611 for the average traveler.

Additionally, 2011 study by the Advisory Panel for Historic Preservation has also confirmed that tourism is a growth industry worldwide and that there seems to be consistent evidence that heritage tourism is one of the fastest growing segments of that industry. the St. Croix National Heritage Area will play an important role in the revitalization of St. Croix; and its towns and neighborhoods and a key part of strategic economic development planning for the Territory.

Enactment of a National Heritage Area for St. Croix has been a top priority of mine for almost ten years. I am therefore hopeful and encouraged that S. 1274 could be the catalyst to finally make it a reality.

Last but not least, the bill includes my legislation, H.R. 85, to establish a Chief Financial Officer in section 7. I first introduced legislation to create a Chief financial Officer for my district, the U. S. Virgin Islands in 2003. At that time, the then governor was warning of layoffs, payless paydays and reduced services. My financial advisory team was urging a control board, and the Federal government had put our Housing Authority into receivership, the U S Department of Education was preparing to place a fiduciary to oversee and control spending in our local department and the Department of Justice was considering putting other local agencies under receivership. Our Prisons and waste water systems were under consent decree.

Not seeing any concerted effort to reverse or correct the situation, as an elected leader of my community I did not feel I could sit by and do nothing. The Bill to create an independent CFO was my response.

In the 111th Congress we revised the bill, removing any authority that would infringe on those of the Governor and his cabinet. This CFO would simply certify the revenue of the Territory. I felt that this was important then and now as the Virgin Islands' legislators, unions and every day citizens repeatedly question the reports and projections of the Virgin Islands government. At the very least it would confirm the government's projections objectively and independently, and at best the people of the Virgin Islands would have an accurate and trusted source of this information.

Today after the layoffs of approximately 500 government employees, an across the board 8% cut in salaries, a structural deficit and budget shortfalls in FY 2013 yet to be filled with a 2014 unbalanced budget now before the VI Senate; with union negotiations stalled, and uncertainty on the restoration of the 8% cuts, coupled with the closure of our largest private sector employer the HOVENSA oil refinery—resulting in reduced revenues, I feel that this office is more needed than ever.

No, it will not solve the fiscal problems we are facing. All of us—elected and other leaders have a hard road ahead to meet these challenges, but it will pave the way for us working together to resolve them as we will all trust the numbers and be clear on where we are financially. HR. 85 is based on the CFO in the District of Columbia and that office has served them well over the past 20 or so years.

Many may ask if such an office is needed why then is it not being created locally. There have been several attempts to pass legislation aimed at the same goal of better financial accountability and transparency, but they have not passed. The current administration strongly opposes this bill and would surely veto such local legislation.

Some may feel that passing this bill would represent an imposition of the will of Congress on local authority. I would respond that it is legislation introduced by the representative of the people of the Virgin Islands, and further there are many times that Congress has been and will continue to be called on to act on behalf of the Virgin Islands because we are still governed by an act of Congress—the Revised Organic Act of 1954.

I had expected that the House would have completed action on H.R. 85 and sent it to you for further consideration as we have done on four previous occasions but that will not occur until later this month.

In closing Mr. Chairman and Ranking Member, I would like to request your consideration for adding two more of my bills as S. 1237 moves forward.

The first bill is H.R. 374 which seeks to create an innovative pilot program to leverage private pension assets to raise revenues for both the federal treasury and investment in the Virgin Islands. It would creatively address the chronic underfunding of infrastructure needs in the Virgin Islands through a dedicated source of revenue that would enable the territory to build a modern infrastructure that would move the islands toward self-sufficiency and reduce unemployment. These investments would substantially mitigate the federal government's cost for rebuilding after tropical storms and hurricanes. The Joint Committee on Taxation estimated that the bill would raise \$477 million over 10 years to the U.S. Treasury; however, with the full implementation of the Roth income cap removal, it is now likely to raise approximately \$500 million a year.

The second bill, H.R. 79, would address a problem with the Affordable Care Act which included a significant increase in the federal medical assistance percentage (FMAP) for the territories but kept or match at a rate which prevents us from accessing the increased funding. H.R. 79 would amend the law to tie the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, beginning in FY2014, to the highest FMAP applicable to any of the 50 states. This legislation does not have a cost associated with it because it just shifts the existing pool of resources that already are available.

Thank you once again Chairman Wyden and Ranking Member Murkowski for scheduling this hearing today. This concludes my oral remarks. I look forward to answering any questions you may have.

The CHAIRMAN. Congresswoman, thank you. Without objection, we'll put those letters into the record.

I thank you for your thoughtful statement. I also remember all our conversations about health care because you've always been very creative and very practical. And I appreciate your leadership in those areas.

So, let's go next to you, Congresswoman Bordallo. We welcome you.

We'll make your prepared remarks a part of the record. If you'd just like to talk for 5 minutes or so about what's important to you that would be great.

#### **STATEMENT OF HON. MADELEINE Z. BORDALLO, GUAM DELEGATE TO CONGRESS**

Ms. BORDALLO. Hafa Adai, Chairman Wyden and Ranking Member Murkowski and members of the committee who are here. Thank you for your opportunity to provide testimony on the renewal of the Palau compact in the Omnibus Territory Act.

First I'd like to address the critical importance of advancing the renewal of the Palau Compact.

Palau is one of our closest and our strongest allies. Renewal of the Palau Compact has lingered in the U.S. Congress for over 4 years. Our lack of action on renewing the compact has very significant impacts for the geopolitical situation in the Western Pacific. Palau is truly critical to our national security and economic interest. We should not put this relationship in jeopardy.

With regards to the Omnibus Territories legislation I want to particularly thank Chairman Wyden and Ranking Member Murkowski for introducing this bill. This bill contains many provisions important to the territorial delegates. I hope this committee will advance this legislation in the coming months.

Of particular importance to the people of Guam is section 12, the text of the Guam World War II Loyalty Recognition Act. I think, Mr. Chairman, this is one of those that you referred to as controversial. Bringing resolution to a painful chapter in Guam's history is critical.

In particular this bill would implement the recommendations of the Guam War Claims Review Commission which was established by the 107th Congress. The Review Commission found that the occupation of Guam was especially brutal due to the unfailing loyalty of the people of Guam to the United States of America. The people of Guam were subjected to forced labor, forced marches, internment, beatings, rapes and executions and including public beheadings. The Review Commission recommended that Congress remedy this injustice through the enactment of legislation to authorize payment of the claims.

Now the big question is why doesn't Japan pay for this?

It is important to note that the Review Commission found that the United States signed a Treaty of Peace with Japan on September 8, 1951, which precludes Americans from making claims against Japan for war reparations. The treaty closed any legal mechanism for seeking redress from Japan. The U.S. Government has settled claims for U.S. citizens and other nationals through various claims programs authorized by Congress.

Further, this section addresses concerns that have been raised about this legislation in the past.

First, the text reflects a compromise that was reached with the Senate when they considered the legislation as a provision of the National Defense Authorization Act for fiscal year 2011. That compromise removes one claims category but protects the claims of living survivors. We went on with this.

The provision also contains an offset for the estimated cost of the bill. The bill would be paid by section 30 funding remitted to Guam through the U.S. Department of the Interior at any level above section 30 funds in fiscal year 2012. With the realignment of military personnel to Guam, it is expected that Guam will receive additional section 30 funds above the current levels.

This mechanism is a credible budget offset that meets Senate and House budget rules. I have talked to local leaders about this offset. There is a consensus that while they would prefer an outright appropriation from Congress, they recognize that we must overcome budget objections that have stymied this bill.

Our community recognizes that we must solve this matter once and for all. I'm passing this authorization to bring justice and closure for the people of Guam.

Earlier I discussed the importance of the Palau Compact Renewal. However, it is also important to remain mindful of the impacts of compact migrants on affected jurisdiction. The compacts, while important to our national interest, do have negative consequences for local affected jurisdictions. The amount of compact

impact funding in a given fiscal year is not nearly enough to cover the expenses incurred by local governments, who provided services to compact migrants.

Section 13 takes some important steps to address the issue of unreimbursed compact impact costs. Jurisdictions which are greatly impacted by compact migrants spend a significant amount of local funds to support the social needs of these migrants. While Congress does appropriate an annual compact impact funding, these funds are insufficient to cover the entirety of impacts imposed by these migrants.

The Guam legislature has passed a resolution that asks me to seek additional compact impact funding. We recognize that an appropriation in the amounts requested by the Guam legislature is not feasible under the current budgetary constraints. So that is why we must look for other creative solutions that will have a tangible benefit for the affected jurisdictions. We achieve that, in part, through section 13.

Finally, I strongly support inclusion of section 13 in the Omnibus legislation. The provision would very simply clarify current statutes. The provision would make clear the U.S. citizens and U.S. nationals have preference when applying for Section 8 housing on Guam.

Finally, I strongly support section 16 that will increase the waiver on local matching requirements on most Federal grant programs. The territories have limited resources. Oftentimes the matching requirements inhibit them from competing for critical Federal funds.

Mr. Chairman and Ranking Member Murkowski, at this table today we represent 1.4 million American citizens living in the territories. I want to thank you for the chance to testify. I look forward to your questions.

Thank you.

[The prepared statement of Delegate Bordallo follows:]

PREPARED STATEMENT OF HON. MADELEINE Z. BORDALLO, DELEGATE TO CONGRESS,  
GUAM, ON S. 1268 AND S. 1237

Chairman Wyden and Ranking Member Murkowski, thank you for the opportunity to testify on legislation pending before the Senate Committee on Energy and Natural Resources. In particular, I appreciate providing testimony on S. 1237 the Omnibus Territories Act and S. 1268 a bill to renew the Compact with the Republic of Palau. I appreciate the concerted effort to advance legislation and policies that are important to the people of the U.S. territories. Moreover, I appreciate this Committee's continued leadership in finally passing the renewal of the Compact with the Republic of Palau.

#### S. 1268—PALAU COMPACT RENEWAL

Before I address specific provisions in S. 1237, I want to address the critical importance of advancing S. 1268 the renewal of the Palau Compact. Palau is one of our closest and strongest allies. Renewal of the Palau Compact has lingered in the U.S. Congress for over four years and this is simply unacceptable. Moreover, I am deeply concerned by this Administration's lack of focus, effort and attention to this critical issue. Our lack of action on renewing the Compact has very significant impacts for the geopolitical situation in the Western Pacific.

The Compact with Palau as well as the Federated States of Micronesia and Republic of the Marshall Islands is predicated on continued U.S. military access to these areas. In fact, the Compact gives the United States strategic control over a vast area of the Asia-Pacific region. In order to have base rights for 50 years we provide Palauans with free access to the United States and limited direct financial

assistance to the Palau government. The current Compact agreement would provide Palau with \$215.75 million for 14 years and phase out assistance in fiscal Year 2023, a year before the next review.

If we do not follow-up with our commitment to Palau we risk our strategic positioning in this area of the world. The lack of leadership from the Obama Administration and lack of action from the U.S. Congress on this compact renewal risks undermining our strategic goal of rebalancing to the Asia-Pacific region. Time after time I meet with officials from foreign governments who embrace the rhetoric behind the rebalance to the Asia-Pacific region yet express concern about the lack of tangible resources or commitment in the rebalance. The inability to renew the Compact reflects that lack of commitment. The total cost of the Compact renewal is only \$215 million over 14 years. To put that figure in perspective, since 2009 we have spent \$85.6 million in foreign assistance to China.

Several years ago the Congressional China Caucus in the House of Representatives held a briefing from Department of Defense and Department of State officials on the importance of renewing the Palau Compact. The Department of Defense briefer presented a map of the Western Pacific and highlighted the importance of the first and second island chains in U.S. defense posture. Palau is on the front lines of the first island chain and truly critical to our national security, diplomatic and economic interests in the Asia-Pacific region. Our assistance to Palau is a small price to pay for this important partnership.

I find it incomprehensible that we cannot find a reasonable offset to move the Palau Compact renewal legislation forward. I hope that the Obama Administration will renew their leadership role and work with Congress to find an appropriate offset for this critical legislation. I fear that further inaction will undermine the strength of our alliance with Palau and that has serious consequences for the Asia-Pacific region and for my constituents on Guam.

It is also important to remain mindful of the impacts of Compact migrants on affected jurisdictions like Guam, Hawaii and the CNMI. The Compacts, while important to our national interest, do have negative consequences for local affected jurisdictions. The amount of Compact-Impact funding in a given fiscal year is not nearly enough to cover the expenses incurred by local governments who provided services to Compact migrants. I appreciate that S. 1237 takes some important steps to address the issue of unreimbursed Compact-Impact but this issue requires creative solutions during these tight budgetary times.

#### S. 1237—OMNIBUS TERRITORIES LEGISLATION

Of similar importance is today's legislative hearing on S. 1237. I appreciate the efforts of Chairman Wyden and Ranking Member Murkowski to finally act on a variety of provisions and policies that are important to the people of the U.S. territories including my constituents on Guam. There has been little action on issues important to the U.S. territories over the past several years and this bill and hearing are an important step forward. I thank the Chairman and Ranking Member and look forward to working with them to advance this legislation.

#### SECTION 12—GUAM WAR CLAIMS REVIEW COMMISSION

Of particular importance to the people of Guam is section 12, the text of the Guam World War II Loyalty Recognition Act. Guam war claims legislation is one of my top legislative priorities and I appreciate its inclusion as part of the overall omnibus legislation. Bringing resolution to a painful chapter in Guam's history is critical. In particular, this bill would implement the recommendations of the Guam War Claims Review Commission, which was appointed by Secretary of the Interior Gale Norton and established by an Act of the 107th Congress (Public Law 107-333). The Review Commission, in a unanimous report to Congress in June 2004, found that there were significant disparities in the treatment of war claims for the people of Guam as compared with war claims for other Americans. The Review Commission also found that the occupation of Guam was especially brutal due to the unfailing loyalty of the people of Guam to the United States of America. The people of Guam were subjected to forced labor, forced marches, internment, beatings, rapes and executions, including public beheadings. The Review Commission recommended that Congress remedy this injustice through the enactment of legislation to authorize payment of claims in amounts specified.

It is important to note that the Review Commission found that the United States Government seized Japanese assets during the war and that the record shows that settlement of claims was meant to be paid from these forfeitures. Furthermore, the United States signed a Treaty of Peace with Japan on September 8, 1951, which precludes Americans from making claims against Japan for war reparations. The

treaty closed any legal mechanism for seeking redress from the Government of Japan, and the United States Government has settled claims for U.S. citizens and other nationals through various claims programs authorized by Congress.

Further, this section addresses concerns that have been raised about this legislation in the past. First, the text reflects a compromise that was reached with the Senate when they considered the legislation as a provision of the National Defense Authorization Act for Fiscal Year 2011. That compromise removes payment of claims to heirs of survivors who suffered personal injury during the enemy occupation. The provision continues to provide payment of claims to survivors of the occupation as well as to heirs of citizens of Guam who died during the occupation. The compromise continues to uphold the intent of recognizing the people of Guam for their loyalty to the United States during World War II.

The provision also contains an offset for the estimated cost of the bill. Many have expressed concern that there was no offset to pay for the cost of the bill. Guam war claims has a very simple offset that will pay for the cost of the provision over time. The bill would be paid by section 30 funding remitted to Guam through the U.S. Department of Interior at any level above section 30 funds that were remitted to Guam in fiscal year 2012. With the impending relocation of Marines from Okinawa to Guam as well as additional Navy and Air Force personnel relocating to Guam, it is expected that Guam will receive additional section 30 funds. Claims would then be paid out over time based off the additional amounts that were made available in any given year. Not only does this offset address payment of claims but it impacts my jurisdiction only and is a credible source of funding that will ensure that claims will be paid.

I have talked to local leaders about this offset and the Guam Legislature supports this approach provided that use of the Section 30 funds does not set precedence for using these funds in the future which I do not believe it does. As a community, we agree that we must find the means to resolve this longstanding injustice, and the Section 30 offset is a placeholder for the Administration to work with Congress in funding this requirement. We do intend to seek subsequent appropriations from the Obama Administration should this authorization pass so that our Section 30 funds which are intended to address local needs will continue to be made available to the Government of Guam.

Again, resolving this issue is a matter of justice for the people of Guam. This carefully crafted compromise legislation addresses the concerns over the cost of this provision. This provision represents a unique opportunity to right a wrong because many of the survivors of the occupation are nearing the end of their lives. It is important that Congress act on the recommendations of the Guam War Claims Review Commission to finally resolve this longstanding injustice for the people of Guam.

#### SECTION 13—USE OF CERTAIN EXPENDITURES AS IN-KIND CONTRIBUTIONS

I strongly support section 13 of the underlying bill as it is an innovative way to mitigate the impacts of Compact migrants on affected jurisdictions. Essentially the provision would allow affected jurisdictions to consider the cost of providing local services to Compact migrants as an in-kind contribution for the purposes of providing matching funds to certain federal grant programs.

Jurisdictions which are greatly impacted by Compact migrants spend a significant amount of local funds to support the social needs of these migrants. As I discussed earlier, the free access of these migrants to the United States is the key underpinning of these compact agreements. While Congress does appropriate an annual Compact-Impact funding, those funds are insufficient to cover the entirety of impacts imposed by these migrants. This has been affirmed by a GAO report 12-64 in 2011.

The provision will also help to address a key concern and recommendation from that GAO report. In particular, passage of this provision will require the Office of Insular Affairs to develop a mechanism to ensure that there is accurate and uniform way to account for the amount of local funds that supplement federal funding to support the Compact migrants.

The Guam Legislature has passed a resolution that asks me to seek additional Compact-Impact funding. While we continue to engage the Administration and Congress on this issue, we recognize that an appropriation in the amounts requested by the Guam Legislature is not feasible or possible under the current budgetary and political environment here in Washington DC. That is why we must look for other solutions that will have a tangible benefit for the affected jurisdictions. I believe that this provision will help defray the cost of supporting Compact migrants over time and help affected jurisdictions apply for federal programs that support the needs of local citizens.

## SECTION 14—IMPROVEMENTS IN HUD ASSISTED PROGRAMS

I also strongly support inclusion of section 14 in the Omnibus legislation. The provision would very simply clarify an apparent vagueness in current statute. The provision would make clear that U.S. citizens and U.S. nationals have preference when applying for Section 8 housing on Guam. In 1999, Public Law 106-504 amended Section 214(a) of the Housing Community Development Act of 1980, to make citizens of the Freely Associated States (FAS) eligible for federal programs, grant assistance, and services of the United States, “provided that, within Guam any such alien shall not be entitled to a preference in receiving assistance under this Act over any United States citizen or national resident therein who is otherwise eligible for such assistance.”

Congressman Robert Underwood further clarified congressional intent of this legislation by stating on the Floor of the House on June 29, 1999 “American citizens in need of social services such as housing are not displaced by these very migrants. Our omnibus legislation will ensure that American citizens are not left in the back of the line for housing, for public housing.”

The Guam Housing and Urban Renewal Authority (GHURA) promulgated regulations for public housing assistance on Guam that provided, among others, priority for U.S. citizens or nationals to receive assistance over FAS citizens. On May 11, 2012, GHURA received guidance from the U.S. Department of Housing and Urban Development (HUD) that “it is legally inconsistent with HUD’s statutory and regulatory scheme for GHURA to afford U.S. citizens a priority of COFA citizens in Guam on the basis of U.S. citizenship or nationality alone.”

I wrote to HUD on July 9, 2012 to request reconsideration of this guidance because I believed that HUD’s distinction between “preference” and “priority” with regard to GHURA’s tenant selection process misapplied the intent of Congress to not displace U.S. citizens and nationals by permitting FAS citizens in the U.S. to benefit from federal social programs.

HUD responded on August 3, 2012 and reaffirmed its guidance. The Department concluded that while the statute make explicit that FAS citizens cannot receive a housing preference over U.S. citizens, it does not provide that U.S. citizens may receive a preference over FAS citizens on the basis of national origin alone. The letter indicates that in some cases an FAS citizen could receive Section 8 benefits before a US citizen based off local requirements.

I was deeply concerned by this interpretation by HUD and appreciate that this provision is included further clarifying Congressional intent and correcting HUD’s misplaced guidance and interpretation of the underlying statute.

## SECTION 16—WAIVER OF LOCAL MATCHING REQUIREMENTS

Finally, I strongly support section 16 that will increase the waiver on local matching requirements from \$250,000 to \$500,000 on most federal grant programs. This provision will help our local jurisdictions compete for federal grant programs. The territories have limited resources and often times the matching requirements inhibit them from competing for critical federal funds. The initial underlying law that waived matching requirements was set back in 1977 and has not been adjusted since then.

Again, I greatly appreciate the leadership of this Committee in holding a hearing on this bill and its important provisions. I look forward to working together along with other Delegates from the territories to ensure this bill becomes law. I look forward to your questions.

The CHAIRMAN. Thank you, Congresswoman. You certainly deserve credit for bringing some real creativity to this. We’ll certainly have questions about the details and those related issues.

Mr. FALEOMAVEGA. Mr. Chairman, I didn’t mean to interfere. I do apologize. I have to go catch my canoe or I’m not going to be able to make the connecting flights.

The CHAIRMAN. I understand.

Mr. FALEOMAVEGA. Thank you very much.

The CHAIRMAN. We will excuse you. Thank you for coming.

Mr. FALEOMAVEGA. I have absolute confidence in my fellow delegates that they will answer any question you might have.

The CHAIRMAN. Very good.

Mr. FALEOMAVEGA. Thank you very much.

The CHAIRMAN. Thank you, Congressman.

Alright, our next witness will be Congressman Sablan, Northern Mariana Islands.

**STATEMENT OF HON. GREGORIO KILILI CAMACHO SABLAN,  
DELEGATE TO CONGRESS, NORTHERN MARIANA ISLANDS**

Mr. SABLAN. Thank you very much, Chairman Wyden, Ranking Member Murkowski, Senator Risch. Let me start by thanking you for agreeing to introduce the Omnibus Territories Act, S. 1237 and for moving so quickly to hold this legislative hearing.

I'd also like to thank your committee staff for their generous help with our territory offices to assemble this bill so it could be introduced on a bipartisan basis.

Traditionally as Congressman Faleomavaega earlier said, Congress has handled territorial issues outside of the partisan arena. Although recently when stand alone territory bills have come up for consideration they have sometimes been given a party label and sometimes they have to be paired with other bills and that makes passage very difficult.

But by getting the bipartisan sponsorship at the outset and by identifying a group of legislative proposals as territorial in nature, as with S. 1237, the hope is that we can get a lot of work done efficiently and without getting caught up in other concerns.

That said, I acknowledge this committee already reported two sections of S. 1237 having to do with the Northern Mariana Islands as a single, stand alone bill last month which I very much appreciate.

One section dealing with the territories also passed the House last month for the third time unanimously.

The other section, rescheduling minimum wage increases in the Northern Mariana Islands is time sensitive. So there were special reasons to think that these two sections could and should move swiftly to the Senate Floor. I certainly hope the Senate will act this month.

Section 5 of S. 1237 is new, however, and needs a brief explanation. This section makes 3 changes to the Consolidated Natural Resources Act which extended Federal immigration to the Northern Marianas.

First, it provides greater accountability in the use of training funds intended to help U.S. workers replace foreign labor in the Northern Mariana's economy. This is a fee based fund. I think that employers, who pay the fee, deserve to know the money is spent effectively and for the intended purpose.

Second, section 5 provides for the immigration transition period now scheduled to end on December 31, 2014, to continue through 2019. During this transition, which only began 2 years ago, the Department of Homeland Security has been authorized to allow non-immigrants to continue to work in the Northern Marianas until we reach the goal of an all U.S. workers.

In September, however, the GAO reported that 54 percent of the Island's work force is still comprised of foreign labor and noted, "The CNMI economy remains dependent on foreign workers." Recent improvements in hotel occupancy rates and the number of inbound tourists indicate that the demand for service employees,

largely fueled by foreign workers, will continue strong beyond 2014. So it seems necessary to extend the transition period.

This does not undermine the conversion to a U.S. work force. Employers must continue to attest that no U.S. workers available for any given job before having a foreign worker. As I last mentioned, section 5 also sharpens the training program so more U.S. workers should be available.

Third, during the transition period non-immigrants with established investments in the Northern Mariana Islands were also provided status. Section 5 extends the transition period for these investors just as it does for non-immigrant workers keeping investments in place.

Each of these 3 proposed changes come experience implementing the Immigration and Nationality Act in the Northern Marianas. I should emphasize that these changes will help the implementation no matter what the outcome of comprehensive immigration reform bill, the Senate passed on June 27, which I strongly support.

I will close with a word about section 13 which is not specific to the Northern Marianas, but will benefit my Islands as well as Guam and American Samoa. Each of our territories have received non-immigrants from the Freely Associated States which are allowed entry to the U.S. under terms of the compact. Each of our territories have experienced costs from this influx providing health care, education, public safety services.

Congress recognized the Federal responsibility to defray these costs in Public Law 108-188. But there is a shortfall between the Federal reimbursement the law provides and the cost we bear locally. Increasing the Federal reimbursement is a steep hill to climb in the present fiscal environment. So section 13 allows our local government to use the costs of the services to FAS citizens as in-kind offsets for any local matching funds required by Federal formula grants.

Credit to this idea goes to my colleague, Ms. Bordallo. It is also a creative way to remedy the long standing source of friction between the United States insular areas and the Federal Government. I support it fully. Our local governments will still be spending to provide services to FAS migrants, but at least they will have some additional compensation.

Finally, Mr. Chairman, I'll just take a few moments, with your permission, I'd like to make a brief statement also in support of the other bill on the agenda today, S. 1268. As the only Micronesian in Congress, I feel an obligation, a duty, to speak up for the interest of the people of Palau and other parts of Micronesia when I have the opportunity.

In this case I will simply say that the Republic of Palau is a very important island of the United States and that Palau has waited very patiently for Congress to take action and approval of the extension of the compact agreement.

Thank you very much for allowing us to testify this morning. Thank you for the time.

[The prepared statement of Delegate Sablan follows:]

PREPARED STATEMENT OF HON. GREGORIO KILILI CAMACHO SABLAN, DELEGATE TO  
CONGRESS, NORTHERN MARIANA ISLANDS, ON S. 1237

Chairman Wyden, Ranking Member Murkowski, let me start by thanking you for agreeing to introduce the Omnibus Territories Act, S. 1237, and for moving so quickly to hold this legislative hearing.

I'd also like to thank your committee staff from both sides of the aisle, who helped the House territorial offices assemble this bill, so it could be introduced on a bipartisan basis.

Traditionally, Congress has handled territorial issues outside of the partisan arena. Although, recently, when stand-alone, territorial bills have come up for consideration, they have sometimes gotten a party label. That makes passage more difficult. By getting bipartisan sponsorship at the outset, and by identifying a group of legislative proposals as "territorial" in nature—as with S. 1237—the hope is we can get a lot of work done efficiently and without getting caught up in other concerns.

That said, I acknowledge this Committee already reported two sections of S. 1237 having to do with the Northern Mariana Islands, as a single, stand-alone bill, last month, which I very much appreciate. One section, dealing with the territorial sea, also passed the House last month—for the third time, unanimously. The other section, rescheduling minimum wage increases in the Northern Marianas, is time-sensitive. So, there were special reasons to think those two sections could and should move swiftly to the Senate floor. And I certainly hope the Senate will act this month.

Section 5 of S. 1237 is new, however, and needs brief explanation. This section makes three changes to the Consolidated Natural Resources Act, which extended federal immigration to the Northern Marianas.

First, it provides greater accountability in the use of a training fund intended to help U.S. workers replace foreign labor in the Northern Marianas economy. This is a fee-based fund; and I think that the employers who pay the fee deserve to know the money is spent effectively and for the intended purpose.

Second, Section 5 provides for the immigration transition period, now scheduled to end on December 31, 2014, to continue through 2019. During the transition, which only began two years ago, the Department of Homeland Security has been authorized to allow nonimmigrants to continue to work in the Northern Marianas, until we reach the goal of an all-U.S. workforce.

In September, however, the Government Accountability Office reported that 54 percent of the island workforce is still comprised of foreign labor and noted "[t]he CNMI economy remains dependent on foreign workers." Recent improvements in hotel occupancy rates and the number of in-bound tourists indicate that the demand for service employees, largely filled by foreign workers, will continue strong beyond 2014. So it seems necessary to extend the transition period.

This does not undermine the conversion to a U.S. workforce. Employers must continue to attest that no U.S. worker is available for any given job before hiring a foreign worker. And, as mentioned, Section 5 also sharpens the training program, so more U.S. workers should be available.

Third, during the transition period nonimmigrants with established investments in the Northern Mariana Islands were also provided status. Section 5 extends the transition period for these investors, just as it does for nonimmigrant workers, keeping investment in place.

Each of these three proposed changes comes from experience implementing the Immigration and Nationality Act in the Marianas. And I should emphasize that these changes will help the implementation no matter what the outcome of the comprehensive immigration reform bill the Senate passed on June 27—which I strongly support.

I'll close with a word about Section 13, which is not specific to the Northern Marianas, but which will benefit my islands, as well as Guam and American Samoa. Each of our territories has received nonimmigrants from the Freely Associated States, who are allowed entry to the U.S. under terms of the Compacts.

Each of our territories has experienced costs from this influx—providing health care, schooling, public safety services. Congress recognized the federal responsibility to defray these costs in Public Law 108-188. But there is a shortfall between the federal reimbursement that law provides and the costs we bear locally.

Increasing the federal reimbursement is a steep hill to climb in the present fiscal environment. So, Section 13 allows our local governments to use the costs of services to the FAS citizens as in-kind offsets for any local matching funds required by federal formula grants.

Credit for this idea goes to my colleague Ms. Bordallo. It is a creative remedy to a longstanding source of friction between the U.S. insular areas and the federal government. I support it fully. Our local governments will still be spending to provide services to FAS migrants, but, at least, they will have some additional compensation, even if not as new federal dollars.

Finally, with your permission, Mr. Chairman, I ask that the comments of Northern Mariana Islands Governor Eloy Inos, which I have here, be added to the record on S. 1237 for the Committee's consideration.

Thank you, again, for introducing this bill and for holding today's hearing.

The CHAIRMAN. Congressman, thank you so much.

We enjoyed talking with you as well in the office here recently and appreciate your good work.

The Honorable Congressman Pierluisi.

#### **STATEMENT OF HON. PEDRO R. PIERLUISI, RESIDENT COMMISSIONER TO CONGRESS, PUERTO RICO**

Mr. PIERLUISI. Chairman Wyden, Senator Murkowski, Senator Risch, thank you for inviting me to testify.

I want to begin by thanking the committee for scheduling a separate hearing on the political status referendum that was held in Puerto Rico and on the Federal Government's response to that referendum. I look forward to testifying about that subject next month.

With respect to the present bill I want to express support for 3 particular provisions.

Section 8 requires the GAO to evaluate the annual estimates of revenues and expenditures of the territory governments and to make recommendations for improving the process by which those estimates are developed. Puerto Rico faces severe economic challenges. Based on all indicators Puerto Rico has lagged far behind the States for at least 4 decades. The income gap between the territory and the States continues to widen.

Puerto Rico's population decreased by nearly 4 percent between 2000 and 2012. With hundreds of thousands of island residents relocating to the States in search of economic opportunity. This exodus is likely to worsen because the governing party in Puerto Rico has enacted a series of laws that purport to stabilize and strengthen the economy but are so poorly conceived that they can be expected to produce the opposite effects.

As this committee knows I support statehood for Puerto Rico and do so in meaningful part because history shows that every territory that joins the Union experiences a substantial increase in its economic activity and standard of living. Statehood is the only status that will enable Puerto Rico, on an enduring basis, to reduce unemployment, attract investment, retain talent, promote growth and manage our deficits and debt. However, until Puerto Rico becomes an equal member of the American family, I must take all reasonable steps to strengthen the island's economy within the constraints imposed by our territory status.

My support for section 8 is rooted in this responsibility. The provision will address a problem that has been witnessed in Puerto Rico. That is the tendency for the local government to overestimate revenue and underestimate expenditures.

For example, between 2006 and 2008 the Puerto Rican government overestimated revenue by an average of nearly \$900 million

annually. Between 2009 and 2012 this practice came to an end with actual revenues slightly exceeding projected revenue. However, economists and rating agencies have expressed concern that the Puerto Rico government may now be returning to its old ways.

When a government makes inaccurate budget projections it has a cascading effect resulting in larger deficits, excess borrowing, credit downgrades, higher interest payments and the diminished ability to meet pension obligations and make important investment decisions in priority areas. I am confident that the GAO can provide sound advice to help the territory governments with the budgeting process.

Next, I want to express support for section 6 which requires the Federal Government to establish a team of experts to develop and helping implement a plan for each territory to reduce reliance on imported oil and to transition to cleaner energy sources that will improve the environment and lower electricity costs.

A typical territory resident pays two to 3 times more for electricity than the U.S. national average. As an island that does not produce oil, coal or natural gas, Puerto Rico faces the inherent energy challenges notwithstanding the progress that was made under the last Administration in Puerto Rico which oversaw a nearly 15 percent increase in the use of natural gas and a doubling of the use of renewable sources. Puerto Rico still generates most of its electricity from imported oil.

Burning oil pollutes the air and explains why Puerto Rico has the highest rate of asthma and other respiratory illnesses in the Nation. Oil is expensive and subject to sudden price shocks. The high cost of electricity strains family budgets and harms businesses.

The plans called for by section 6 will help the governments of Puerto Rico and the other territories diversify their energy portfolios and reduce electricity rates.

Finally, I want to express my support for section 20 which is drawn from legislation I introduced. Current law authorizes the Department of the Interior to support efforts in foreign countries to protect endangered marine turtles. Section 20 would enable the Department to support such projects in the U.S. territories as well. This is appropriate given that most of the marine turtle species are found in Puerto Rico. Section 20 empowers the Federal Government to provide assistance to preserve this species for present and future generations.

In closing, I appreciate this committee's attention to the fiscal, energy and environmental concerns in the territories. I look forward to working with you to advance this bill and to make any additions that may be appropriate.

Thank you.

[The prepared statement of Commissioner Pierluisi follows:]

PREPARED STATEMENT OF HON. PEDRO R. PIERLUISI, RESIDENT COMMISSIONER TO CONGRESS, PUERTO RICO

Chairman Wyden, Ranking Member Murkowski and Members of the Committee: thank you for inviting me to testify about S. 1237, the Omnibus Territories Act.

Before I begin, I want to thank the Committee for agreeing to hold a separate hearing, originally scheduled for June 11th and rescheduled for August 1st, on the referendum that was held last November in Puerto Rico regarding the territory's po-

litical status, and on the federal government's response to the historic results of that referendum. I look forward to testifying before the Committee about that subject next month.

With respect to the legislation before the Committee today, I will use my time to express support for Sections 6, 8 and 20 of the bill.

Section 8 would require the GAO to evaluate the annual estimates of revenues and expenditures of the territory governments, including the government of Puerto Rico, and to make recommendations for improving the process by which those estimates are developed.

Puerto Rico faces severe economic challenges. Based on all economic indicators, the territory has lagged far behind the states for at least four decades, and the income gap between Puerto Rico and the states continues to widen. Puerto Rico's population decreased by nearly four percent between 2000 and 2012, with hundreds of thousands of island residents departing for the states in search of improved economic opportunities. This exodus is likely to worsen, because the governing party in Puerto Rico has recently enacted a series of laws that purport to stabilize and strengthen the economy, but are so poorly conceived that they can be expected to have the opposite effect.

As the Members of this Committee are aware, I support statehood for Puerto Rico, and do so in meaningful part because history shows that every territory that joins the Union experiences a substantial increase in its economic activity and standard of living. I believe statehood is the only status that will enable Puerto Rico, on an enduring basis, to reduce unemployment, attract investment, retain talent, promote growth, and manage our deficits and debt.

However, until the day—not too far off, in my estimation—that Congress welcomes Puerto Rico as a full and equal member of the American family, it is my responsibility to take all reasonable steps to strengthen the Island's economy within the severe constraints imposed by the current territory status.

My support for Section 8 is rooted in this obligation. The provision will help address a problem that has been witnessed in Puerto Rico and other territories, and that is the tendency for the local government to overestimate the amount of revenue that will be collected and to underestimate the amount of government expenditures that will be made in the coming fiscal year. For example, between Fiscal Year 2006 and 2008, the Puerto Rico government overestimated revenue by \$1.1 billion dollars, \$822 million dollars, and \$718 million dollars, respectively. Between Fiscal Year 2009 and 2012, this practice came to an end, with actual revenue exceeding forecasted revenue by a fairly small amount each year. However, economists and rating agencies have expressed concerns that the Puerto Rico government may now be returning to its old ways.

When a government makes inaccurate budget projections, it has a negative, cascading effect—resulting in larger deficits, excess borrowing, credit downgrades, higher interest payments, and the diminished ability to meet pension obligations and make important investments in education, infrastructure, public safety and other priority areas. I respect the work of the GAO, and am confident that their sound advice will help the governments of Puerto Rico and the other territories better manage their finances.

Next, I want to express support for Section 6 of the bill, which would require the federal government to establish a team of experts to develop—and help implement—an action plan for each territory to reduce reliance on imported oil and to transition to clean energy sources that will improve the environment and lower electricity costs.

A typical territory resident pays two to three times more for electricity than the U.S. national average. As an island that does not produce oil, coal or natural gas, Puerto Rico faces inherent energy challenges. Notwithstanding the progress that was made under the last administration in San Juan—which oversaw a nearly 15 percent increase in the use of natural gas and a doubling of the use of renewable sources like solar and wind—Puerto Rico continues to generate most of its electricity from imported oil.

Burning oil pollutes the air and is a major reason why Puerto Rico has the highest rate of asthma and other respiratory illnesses in the United States. Oil is expensive and subject to sudden price spikes based on world events outside our control. The high cost of electricity strains family budgets and is regularly cited as the main burden facing current and prospective island businesses.

The action plan called for by Section 6 will help the governments of Puerto Rico and the other territories diversify their energy portfolios and reduce electricity rates, thereby improving the environment and bringing relief to consumers.

Finally, I want to express my support for Section 20, which is drawn from legislation I introduced. Current law authorizes the Department of the Interior to support

efforts in foreign countries to protect endangered marine turtles. Section 20 would enable the Department to support such projects in the U.S. territories as well. This is appropriate given that four of the seven species of marine turtles are found in Puerto Rico. The territories are home to many natural treasures. Section 20 empowers the federal government to provide assistance to preserve one of these treasures for present and future generations.

In closing, I want to express my appreciation to this Committee for its attention to the fiscal, energy and environmental concerns in the territories. I look forward to working with the Committee to advance this legislation and to make any additions to the bill that may be appropriate.

Thank you.

The CHAIRMAN. Very good. Thanks so much.

Ms. Sobeck, representing the executive branch. We have had 4 legislators. We have now the executive branch.

**STATEMENT OF EILEEN SOBECK, ACTING ASSISTANT SECRETARY FOR INSULAR AREAS, DEPARTMENT OF THE INTERIOR**

Ms. SOBECK. Thank you very much, Mr. Chairman. Thank you for your gracious invitation today. Ranking Member Murkowski and Senator Risch, thank you for including me on this distinguished panel.

My full statement addresses all of the sections of the bill. In this limited time I will just touch on a few of them without any disrespect for the ones that I'm leaving out.

First, with respect to section 3 of the bill regarding giving CNMI authority over submerged lands out to 3 miles from its coastline. CNMI is the only territory that currently doesn't have authority over, title to its submerged lands. We do support CNMI getting this authority out set out consistent with the January 2010 Presidential Proclamation creating the Marianas Trench Marine National Monument. Therefore the Department of the Interior strongly supports enactment of section 3.

But we also strongly recommend an amendment that addresses the coordination of management as contemplated in the proclamation prior to the transfer of submerged lands to ensure that the island unit of the monument will retain its protections. We look forward to working with the CNMI to ensure that an appropriate agreement is worked out.

With respect to section 6 of the bill which calls for energy action plans for each territory and the FAS. We believe that this language is largely duplicative of an existing law, Section 604 of Public Law 96-597, except that the Secretary of the Interior would now be responsible for the described energy effort rather than the Secretary of Energy.

However 8 years ago Interior undertook a comprehensive effort to study energy needs and is currently supporting energy planning efforts through NREL and financed by our Technical Assistance Program within the Department of the Interior. Our 2014 budget includes funds to implement a number of the NREL recommendations. Therefore the Department of the Interior opposes section 6 of S. 1237 as duplicative of existing authority and existing actions and programs being carried out by the Department of the Interior.

With respect to section 7, which includes provisions for establishing a Chief Financial Officer for the Virgin Islands and a plebiscite of Virgin Island voters on the issue. In the past the Depart-

ment of the Interior has had no objection to such a bill because it would only have imposed some diminimus interference with self government of the Virgin Islands. With the addition of the plebiscite we think that's only reinforced. So at this point the Department of the Interior has no objection to the enactment of section 7.

With respect to the Low Income Home Energy Assistance Program. We are very sympathetic to the concerns that have been raised by Representative Christensen. Given that the electric rates in the Virgin Islands are more than 4 times those on the U.S. mainland, it seems as if payments under the Assistance Act of 3 times the mainland amount for a limited period is quite reasonable.

We would note that in addition the territories of Guam, CNMI and American Samoa are also paying significantly higher residential rates than in the rest of the United States. We would have no objection to the enactment of similar provisions on a fair pro rata basis, some sort of formula that the committee devised for the other territories and that they be included in this section as well.

Section 10 would establish Castle Nugent on St. Croix as a National Historic Site within the National Park system. A special resource study has already found that site has met the criteria for inclusion in the National Park system. Including this site would protect this outstanding cultural landscape. We support that provision.

Section 11 would include the entire island of St. Croix as a National Heritage Area and we generally support the objectives of this section. But we would recommend that Congress enact a programmatic legislation that establishes criteria to evaluate potentially qualified National Heritage Areas and a process for the designation funding and Administration of these areas before designating any additional sites.

With regard to the Guam War Claims Review Commission. We understand the importance of this provision. We understand that the creative measures being taken to fund it. We recommend that broad counsel be taken along Guam leaders.

With respect to section 13. While we are mindful and sympathetic of the impacts and we know that this is a huge concern. We are very concerned and must object to the provisions of section 13. We believe that there are not the specific and exacting standards that are necessary to determine what the standards for measuring the costs and the benefits incurred by migration to the State of Hawaii and the territories and that those must be established before anything along those lines could ever be included.

With respect to matching requirements. Of course we are fine with those provisions with respect to the Department of the Interior an increase seems more than reasonable.

With regard to the American Samoa plebiscite, Citizenship Plebiscite Act, we support that provision. It seems like an auspicious time to support finding out what the will of the people of American Samoa are with respect to citizenship.

Finally, with respect to the marine turtles, we would have to object to not support section 20 at the moment. While we support the intent for increased funding for turtle conservation in the U.S. territories, we note that there's already a significant amount of do-

mestic spending for the States and the territories for marine turtle protection and conservation and that the Turtle Conservation Act of 2004 is designed to provide a small amount of funds to foreign countries.

The CHAIRMAN. Why don't you see if you could, Ms. Sobeck, wrap up. We just want to ask some questions.

Ms. SOBECK. That concludes my remarks, Mr. Chairman.

The CHAIRMAN. Very good. Thank you.

Congresswoman Christensen, on the electric rate front, as we've heard today all the territories are getting just clobbered with these high electric rates. I know your constituents have a particularly difficult time because of the suddenness of the price spike coinciding with the departure of HOVENSA, this very large employer and fuel supplier.

So tell us a little bit. I understand you've got some short-term plans to cope with this. Why don't you lay out for us what you hope to do there?

Ms. CHRISTENSEN. If you would visit, especially St. Croix right now, you would find that many of our businesses have closed. Even in some areas you'll find that some households are going without electricity because of the high cost because we are approximately 5 times the national average.

So while our utility, the Virgin Islands Water and Power Authority, is in the planning stages for making a transition to propane and then to natural gas. That would probably not happen for another 12 to 18 months. The people of the territory, given our economic conditions and the costs now cannot wait that long.

So one of the areas is increasing the LIHEAP assistance in the territories for a period of time. I have no objection to having it extended to the other territories who are facing similar high costs.

Another one is increasing weatherization funding so that households can reduce their use of electricity and thus reduce the costs.

We have another proposal that we're trying to work through the Farm bill that would transfer funds from a loan program at USDA to the High Energy Costs Grant Program that they have that would assist any of the territories that meet the criteria of that grant right now with additional funding to help to lower the cost of their electricity. We're working with Senator Stabenow and her staff on that one.

We just feel that it's really critical. There's no more important issue to the people of the territory right now than reducing their electricity costs. It is creating safety hazards for families. It is hampering our economic recovery and making it very difficult.

I would add that the House Energy and Power Committee, yesterday, passed my bill to create the team of technical experts that is included in this bill today. We feel that that is critically important. EIA has been very helpful over the years, but we still are facing 50 cents and 54 cents costs. When we started to look at propane and natural gas, because they are focused on renewal, they were not able to really expand from that to help us look at the full range of fuel sources because we, like the President, we believe in an all of the above. We still don't have an integrated resource plan that would help us put the best mix of fuel sources together and create energy for the lowest cost for our territory.

The CHAIRMAN. Let me see if I can get some of your other colleagues into this discussion. But I very much want to work with you on these energy issues and know you've put a lot of time into this.

Ms. Bordallo, as you know various versions of the Guam War Claims issue have been discussed here in the Senate over the years. We've talked about the issues with respect to the price. Tell us your take with respect to how the text of the Guam War Claims issue in the Omnibus Territory bill is going to get us over the challenges we've seen in the past?

I know you're trying very hard to be creative on this.

Ms. BORDALLO. Thank you. Thank you, Mr. Chairman.

First let me correct the record. I mentioned that we represent, we delegates and the Resident Commissioner here, represent 1.5 million. It's 4.5 million thanks to the huge population of Puerto Rico. But I do want to emphasize that, that we are American citizens living in U.S. jurisdictions.

The war claims is very important to me, Mr. Chairman. All of my predecessors, beginning with Mr. Won Pat, which he was our first, have tried to get this through. The immediate predecessor, Dr. Underwood, introduced legislation to establish a commission. We have followed the rules all along the way.

I came into office, but there wasn't funding for this commission. So we received the funding, established a commission. They met several times, had meetings, public hearings, back in Guam and decided, very, very thoroughly that we were not treated, you know, in the right way. We deserved to be given some compensation and recognition for what we went through during World War II.

Now the cost has come up, Mr. Chairman, at first. Incidentally this bill, 44, has gone through the House 5 times.

Once by an outright vote. Other times it was included in the National Defense Authorization Act.

Then it came over to the Senate. We took out a section there of survivors of those who died during the war and that was objectionable to one of the Senators. So we removed that. I went back to Guam and checked with our people. They agreed it's alright.

So that was removed. Then the last time I went down on the Senate Floor we were asked for an offset. Now we have come up with an idea for an offset.

So we have done everything we can. It is very, very important to Guam. Although there are very few survivors now, the CBO last estimated in 2010 that the bill would cost about \$100 million. But that was before they had the 2010 census data.

So now, we have roughly estimated off informal surveys that we did several years ago that the cost would be around \$80 million. Again, this is informal.

As we speak many of the survivors are dying. They are in their 80s and 90s now. I just feel that, you know, as long as I'm a member of the Congress, I hope we will see this through.

It's been a thorn in the side of many of our local people. They feel that other jurisdictions, the CNMI were given their recognition and compensation for what they went through. With that I just feel that it's very, very important to where I am to get it through.

The CHAIRMAN. I'm over my time. I want to recognize my colleagues.

But we will work very closely with you, Ms. Bordallo. I know this has just gone on and on and on. It's time to get a resolution of it.

To my other colleagues, Congressman Sablan and Congressman Pierluisi, we may give you some questions in writing.

Both of you have given excellent presentations.

I know that Congressman Sablan, you have some issues with respect to the deadline on section 4 of S. 256 and some of the concerns that could cause a hardship if this isn't resolved quickly.

So all of you have given excellent presentations.

Let me recognize, Senator Murkowski now and then Senator Manchin.

Senator MURKOWSKI. Thank you, Mr. Chairman.

As I listen to each of you present here on these issues I can't help but be reminded that it was just several decades ago that Alaska was in the same situation. We were a territory. We were treated like a territory.

We've made some progress as a State. Some would say we have done some amazing things. But yet as I listen to your issues and your priorities, they are still so much the same as we face in Alaska.

The high cost of energy, even though we are an energy producing State, unlike Puerto Rico, the Virgin Islands, where you are not able to produce. We're able to produce and yet we still have some of the highest energy costs in the 50 States. In one village, Lime Village, it is the highest cost per capita or per kilowatt/hour. The folks there in that village are paying \$1.40 a kilowatt hour. It's not sustainable.

It's not, as you know, Congresswoman, you can't afford to live in these places. So many of our rural communities, our rural villages, are facing energy costs in excess of 40, 50 cents a kilowatt hour. They cannot continue to live.

It's a different situation. They don't need the air conditioning, but they need the heat. So at the end of the day it all comes down to being able to live in a region, in an area.

The Congressman from American Samoa, good friend, spoke to the issue of the cost benefit ratio that you face. It's pretty tough to meet a ratio that seems reasonable when your costs are so high because of transportation, small population numbers. It's never going to pencil out. So we lose every single time.

You also mentioned the issue of meeting the match, the local match. Again, when you don't have significant population, it's just really difficult to be in there and competing.

So please know that I share the frustration that so many of you have as you try to represent those in your respective territories. We have a lot of work to do together.

I'd like to ask you, Congressman Sablan, about this immigration transition period. You mentioned it in your comments. It's my understanding that the Secretary of Labor doesn't need to make a decision on the extension until 180 days before the transition period ends there at the end of the year 2014.

So, OK, technically we've got a period of time here. But what does waiting do to the local businesses, the economy, if you don't

know what the decision is going to be? Have you given any consideration to what the impact might be with the situation in terms of just really not knowing whether this transition is going to be extended?

Mr. SABLON. Yes. Thank you. Thank you very much for the question.

Yes, the impact is serious. At a time when we're just beginning to see an uptake in our economy. In the last study we saw an uptake of 2.3 percent.

Basically grateful to Inos spending, it was territory government spending. Too recent the family beginning to pick up. Businesses need to make a decision.

Obviously the present law says that the Secretary of Labor has to make a decision by 180 days before, but look, we've all, you know, we've seen, we know the bureaucracy like to wait until the very last minute to make decisions. But we would like to treat businesses and workers in the Northern Marianas better than that just out of common decency. Businesses need to plan out. Airline charters need to be arranged. Hotel rooms need to be booked. They need to decide, to know, whether those workers are going to be there.

The Department of Homeland Security has said the number of workers, CW workers in the Northern Marianas at 15,000 up to 2014. So we know that we can't zero this out immediately on December 31, 2014. We know that they will have to just make an extension, recently, consistent with the law. We're just urging them to do so. They can't wait until 180 days just because that's what the law says.

But we've been trying to work with them. Now we finally had a meeting. We got nothing from that meeting really except, you know, just a lot of meeting. We really need to continue to urge them. So we're trying to include that in the language.

Thank you very much. I hope I have answered your question, Senator.

Senator MURKOWSKI. You did. I appreciate that. It would be helpful if you could get something from that meeting in terms of an indication as to where they might want to go.

My time is expired. But I want to ask very quickly to Congresswoman Bordallo regarding the Guam War Claims language.

You've mentioned that given the very specific beneficiaries of these war claims and the fact that these individuals are dying off at a rate. That you initially anticipated about \$100 million would be necessary. Now it's down to 80.

Given what we're seeing in terms of the military buildup so the additional funding that would then come under this section 30. How many years of funding do you anticipate you would need to cover these war claims?

Have you done an assessment on that?

Ms. BORDALLO. No, we haven't done that. But it's a good question.

However, I do want to point out, Senator, that we do have, we have talked to the Guam legislature and the Governor about this and have explained it to them very thoroughly. They seem to be on board with this.

We have had occasions where they've said they've agreed to it. I do want you to know that.

The point is that we would take these section 30 moneys until such time this amount is covered and the years that it would take? I really couldn't. We'd have to know how much money the military is going to contribute to the section 30 funding.

We could certainly let you know that if we could look at it. But it's a very good question.

Senator MURKOWSKI. I think it might be helpful.

Ms. BORDALLO. Yes. We will want to be sure that we go back to the previous. Once it's covered that we then, the section 30 funding with addition to the military, will be back in the government of Guam coffers.

Senator MURKOWSKI. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

We're always glad to have our friend, Senator Manchin. Welcome.

Senator MANCHIN. Thank you, Mr. Chairman.

Before I start my line of questioning with Congresswoman Christensen, my disclaimer is I'm a former Governor. So you know where I'm coming from with the questions.

The revised Organic Act of the Territory of the Virgin Islands provides for the Executive and legislative branches to make important decisions on behalf of the territory's residents. It seems that your proposal to install a CFO to make important budgetary decisions for the Virgin Islands, undermining both this act and the current processes of trying to find a path toward a constitution.

Your response?

Ms. CHRISTENSEN. On the issue of the constitution. Most every constitution has included a provision such as a Chief Financial Officer. And often we've seen that as we have not been able to pass a constitution certain provisions have actually been put in place.

My legislation to create a Chief Financial Officer is a temporary position. It is one that would come to a referendum under the original legislation at some point before the term was up. So it's seen as a temporary, not a permanent, position. So we don't feel that it is contrary to the Organic Act.

But more importantly, you know, when we looked at where our government was in 2003 and where we look at where it is today, I think it is a reasonable approach to addressing, not only the distress that exists of government, but in just being more fiscally responsible and fiscally accountable. It is interesting that in every election that has taken place since 2003, as we go to forums and debates, the issue is always raised. Are you in favor of a Chief Financial Officer?

I will tell you that, with very few exceptions, no one running for office is willing to say to the public that they don't support it. There's wide public support for it.

Senator MANCHIN. Let me ask you this.

Installing an appointed and not an elected CFO to supervise the finances of the Virgin Islands seem like that would be, to me, hard to do, especially when you enjoy democratic elections.

As a former Governor I appointed my revenue secretaries. I appointed my budget teams. I was held accountable and responsible.

You have an election. I understand you're running for Governor?

Ms. CHRISTENSEN. I plan to.

Senator MANCHIN. OK. So why wouldn't you wait and then if you want to give those powers away or if you want to put the right person, why wouldn't you do it then?

Ms. CHRISTENSEN. As we have gone through this process and we've reached——

Senator MANCHIN. Why——

Ms. CHRISTENSEN. Senator, this has passed the House 5 times—4 times.

Senator MANCHIN. Let me ask you this, if I may.

Ms. CHRISTENSEN. Can I just respond to the first question?

Senator MANCHIN. OK.

Ms. CHRISTENSEN. At this point in this Omnibus Territories bill the Chief Financial Officer would go to a referendum where the people would decide at the next election. I think that that is only fair. Let the people voice their will.

Senator MANCHIN. The people have voiced if they've elected your Governor. If I was your Governor I would be offended that you would be pushing my Administration that I'm not running it properly when I just got ratified. I just got elected.

How?

Ms. CHRISTENSEN. The Governor himself, when he was first running, when he was asked at a forum, did he support the Chief Financial Officer? And at that time the Chief Financial Officer had more authority to interfere in the authority of the Governor in the first iteration of this bill. The Governor said yes, I support a Chief Financial Officer.

Senator MANCHIN. The way this bill is drafted, S. 1237, it says each year prepare and certify spending limits of the annual budget including annual estimates. That's——

Ms. CHRISTENSEN. That's all they do.

Senator MANCHIN. That's what your revenue person does. Do you not have a revenue person at all?

Tax Department?

Revenue Department?

Ms. CHRISTENSEN. Yes, we do.

Senator MANCHIN. You're saying they're incompetent.

Ms. CHRISTENSEN. No. I'm saying that and you've heard it from the Puerto Rican Resident Commissioner, that at times the revenue projections are off and it has caused problems in Puerto Rico. It's caused problems in the Virgin Islands.

Senator MANCHIN. If you revenue projections are off your legislature hasn't done their job. There's a check and balance. That's a democracy.

You have a democracy.

Ms. CHRISTENSEN. Would you object to having the people of the Virgin Islands decide whether they wanted a Chief Financial Officer or not?

Senator MANCHIN. Why don't you do away with your legislature and your elected officials?

Ms. CHRISTENSEN. I don't think that that is——

Senator MANCHIN. You can't have your cake and eat it too. You can't have democracy.

Ms. CHRISTENSEN. I don't think that there's anything undemocratic. The District of Columbia has a Chief Financial Officer. If you read the bill the Chief Financial Officer goes through the process of a nomination by the Governor after having a committee present that person to them and is approved by our local legislature as well.

Senator MANCHIN. But I understand revenue. I did an awful lot of budgets. I understand how the process works.

If I gave erroneous revenue estimates to my legislature, they hold me accountable. The people hold me accountable when I go to the election because I haven't been honorable or transparent. I understand all that.

The process either has to work or it doesn't work or you have to get new people.

I just, very respectfully, I'm so sorry. I just disagree because I believe in a democracy. I believe in elected officials doing their job and being held accountable. If they don't, I think when the people speak then we must work through a system. If not, then you have incompetency. They can be removed or impeached.

But you're forcing something to where I know your administration is opposed to that right now. If you wish to do it, God willing, and you're elected. Then you'll have that opportunity.

Ms. CHRISTENSEN. The current administration was not always opposed. But at this point in time at the next election where I'm supporting having the people of the territory decide whether they want that Chief Financial Officer.

Senator MANCHIN. Sure.

I think you should wait until that time to do that. That's why I will be opposing this process right now.

Ms. CHRISTENSEN. The current bill waits until 2014 for that referendum.

Senator MANCHIN. I will duly, respectfully, oppose this at the proper time.

Thank you.

Ms. CHRISTENSEN. Thank you for your question.

The CHAIRMAN. I thank my colleague. I would just say, Senator Murkowski and I often find ourselves in this kind of situation. These issues generate a lot of strong feeling and two individuals I consider good friends, we've just seen that.

One of the thoughts that I think is worth exploring in an effort to try to find some common ground is to see if we can use this GAO report to try to identify concerns that could allow us to come together. So I would just say to two people that I've worked with in the past and who I think have a lot of integrity, we will stay at this and see if we can find a way together.

Senator MANCHIN. Mr. Chairman, I always like to work with you.

The CHAIRMAN. You always do. I just tell my friend from West Virginia back when we were trying to do health reform and we had the only bipartisan proposal, the Congresswoman was there on those kinds of issues.

Senator MANCHIN. Sure.

The CHAIRMAN. I think there's something to be addressed here in terms of agreement and perhaps it will be the GAO approach.

Perhaps it will be others. But I just want both of you to know that we will take your——

Senator MANCHIN. I hope that the Congresswoman knows that with all due respect I just, as a former Governor, I have a hard, you know. Your political opponents and it becomes a political battle back and forth, always has been.

But the bottom line is the elected official basically has the support of the majority of the people who voted. That's a democracy. You enjoy democracy.

I've been to your beautiful islands. Your people are beautiful. I really love it.

I've had interactions with, through the Governor's Associations, with everybody. I think when the people speak, you know, democracy has to grow from that. If there's something wrong, we can help and we can assist. There might be a report. There might be assistance.

But to force legislation upon an administration that does not wish it and they're held accountable by the elected officials, by the electorate. You follow? It's hard for me to comprehend that. I just have a hard time with that.

Ms. CHRISTENSEN. Let me say to you, Governor Manchin, that we've appreciated the work that West Virginia has done with us on our health care issues. I would say that regardless of what a GAO study might or might not say, the people of the Virgin Islands may still desire to have a Chief Financial Officer.

I've been elected since 2003 several times with more votes than any Governor running at the time. But I'm running which should say that the people of the Virgin Islands have supported the concept of the Chief Financial Officer as well.

Senator MANCHIN. If I can say this, Mr. Chairman?

Just one thing, very quickly is that what the Congresswoman was referring to, is that we found out that we had the capacity in our computer. We just bought a new computer system when I was Governor, that we could help the Virgin Islands basically run, help, assist them with their Medicaid without them having expenditure. It's really the cooperation we all should have. We're all together, all of us.

The CHAIRMAN. Let's do this. Let's give the last word to a special peacemaker, Senator Murkowski. She's got to get to her 11 hearing and there are also caucuses and the like. She has been particularly helpful in trying to bring all sides together.

Because I happen to think the Congresswoman has valid concerns. We consistently appreciate Senator Manchin and his efforts to try to bring people together. We're going to stay at it.

Last words for this panel for Senator Murkowski.

Senator MURKOWSKI. I thank you, Mr. Chairman. I don't have a magic wand to wave today. If I did I would fix all of the energy cost issues, not only in the territories, but all over the 50 States as well.

But I think it's clear that you need to have a voice here in the U.S. Congress. You are all quite confident and qualified, but in doing your job and representing the people of your regions, you also know that you don't have that full vote. So it must be extraordinarily difficult as you try to advocate on some issues that are

challenging, are complicated, are complex and oftentimes are very emotional.

So, know that within this committee you have colleagues that want to try to help a process. That I think it was the Congressman from American Samoa that mentioned you sometimes you're just forgotten you're left out. Know that here we don't want you to feel forgotten and left out with your issues, as difficult as they may be.

So we pledge to work with all of you.

The CHAIRMAN. That sums it up ideally because you all have brought passion and expertise. We appreciate you. We'll excuse you at this time.

Ms. Sobeck, we're going to have actually you on this next panel which will consist of Ms. Sobeck.

Vikram Singh, representing the Department of Defense.

Edgard D. Kagan, representing the Department of State.

If you all would come forward.

Alright, let us hear from Ms. Sobeck, then Mr. Singh and Mr. Kagan.

As I indicated we'll make your prepared statements a part of the record. I suspect it's going to start getting hectic here this morning. If you can just take your 5 minutes and say your piece and represent your departments that would be great.

All your prepared statements will be made part of the record.

Ms. Sobeck.

Ms. SOBECK. Thank you very much, Mr. Chairman.

The Compact of Free Association with Palau has proven to be a very successful framework for both the United States and Palau, our joint relations.

The goals of the first 15 years of the compact have been met.

The trusteeship was terminated.

Palau's self government was restored.

A stable democratic state was established.

Other countries were denied military influence in the region of Palau.

With the United States financial assistance, a base for economic growth has been provided.

The original financial terms and conditions of the compact have been fully implemented.

Palau has made strong, economic gains under the Compact of Free Association. Its growth in real terms has averaged just over 2 percent per year. Palau has taken control of its destiny and is moving in the right direction.

As both the United States and Palau began their mandated compact review several years ago they agreed that economic growth would rely on 4 key factors.

First, trust funds ability to return \$15 million a year.

Second, fiscal reforms to shrink Palau's public sector and raise revenue.

Third, increased foreign investment and private sector growth.

Four, continuation of certain U.S. assistance.

The new agreement addresses all of these concerns.

The agreement extends U.S. assistance in declining annual amounts through fiscal 2024 with a total direct financial assistance

under the agreement is \$229 million, \$52.6 million of which has already been appropriated through fiscal year 2013.

The amount of direct assistance will decline every year which is intended to provide an incentive for Palau to develop other sources for local revenue and the Palauan government will need to make systemic adjustments in order to live within those resources.

The agreement contains 5 categories of financial assistance for Palau.

Category 1, direct economic assistance for education, health, administration of justice and public safety, starting at \$13 million a year and declining to \$2 million in 2023.

Category 2, infrastructure projects in the amount of \$40 million to be mutually agreed upon in the future.

Category 3, infrastructure maintenance funds for capital projects previously financed by the United States.

So during the life of the agreement the U.S. Government will have contributed \$2 million annually and the Palau government will have contributed \$600 thousand annually to the fund.

Category 4 is a fiscal consolidation fund where the United States will have provided grants, \$5 million, during each of the first 2 years to help Palau reduce its debt.

Finally Category 5, the trust fund where the United States will contribute approximately \$30 million through 2023. Palau will delay withdrawals from the trust fund. Under the agreement withdrawals from the trust fund may only be used for education, health, administration of justice and public safety.

Under the new agreement the United States and Palau will work cooperatively through an advisory group on economic, financial and management reforms through an annual, bilateral, economic consultations and finally through the provision of other U.S. services and programs, through the Postal Service, through the Weather Service, the Federal Aviation Administration and the Departments of Education and Health and Human Services.

While awaiting Congressional approval of the agreement, Interior has remained engaged with Palau through OIA's technical assistance program and assistance for repair of the compact road and facilitating Palau's participation in regional forums. Approval of this agreement remains a priority of the Administration, as I think is evident through the letter that transmitted the legislative proposal.

We look forward to working in partnership with Palau. We're proud of the contribution that Interior and other agencies and the contribution of the United States has made to the success that we call Palau. We look forward to future progress in this area.

Thank you for your consideration.

[The prepared statements of Ms. Sobeck follow:]

PREPARED STATEMENTS OF EILEEN SOBECK, ACTING ASSISTANT SECRETARY FOR  
INSULAR AREAS, DEPARTMENT OF THE INTERIOR

S. 1237

Mr. Chairman and members of the Committee on Energy and Natural Resources, I am pleased to discuss, on behalf of the Department of the Interior, certain provisions of the Omnibus Territories Act of 2013, S. 1237. Sections 14, 15, 17, 18 and 20 of the bill pertain to matters outside of the Department's jurisdiction; as such

the Department defers to the relevant federal agencies for their views on these provisions.

#### *Territorial Sea*

Section 3 would give the Commonwealth of the Northern Mariana Islands (CNMI) authority over the submerged lands out to three geographical miles from its coast lines.

At present, the CNMI is the only United States territory that does not have title to the submerged lands in that portion of the United States territorial sea that is three miles distant from its coastline. It is appropriate that the CNMI be given the same authority as other territories.

On January 6, 2009, by presidential proclamation, the Marianas Trench Marine National Monument (Monument) was created, including the Islands Unit, comprising the submerged lands and waters surrounding Uracas, Maug, and Asuncion, the northernmost islands of the CNMI. While creation of the monument is a historic achievement, it should be remembered that the leaders and people of the CNMI were and are these three islands' first preservationists. They included in their 1978, plebiscite-approved constitution the following language:

#### ARTICLE XIV: NATURAL RESOURCES

Section 1: Marine Resources. The marine resources in the waters off the coast of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction under United States law shall be managed, controlled, protected and preserved by the legislature for the benefit of the people.

Section 2: Uninhabited Islands . . . . The islands of Maug, Uracas, Asuncion, Guguan and other islands specified by law shall be maintained as uninhabited places and used only for the preservation and protection of natural resources, including but not limited to bird, wildlife and plant species.

It is important to note that the Northern Marianas Commonwealth Legislature has never taken action adverse to the preservation of these northern islands and the waters surrounding them. The people of the CNMI are well aware of their treasures. CNMI leaders consented to creation of the monument because they believed that the monument would bring Federal assets for marine surveillance, protection, and enforcement to the northern islands that the CNMI cannot afford.

If enacted, section 3 would become a public law enacted subsequent to the creation of the Monument, and would convey to the CNMI the submerged lands surrounding Uracas, Maug, and Asuncion without addressing the effect of this conveyance on the administrative responsibilities of the Department of the Interior and the Department of Commerce. Presidential Proclamation 8335 (Proclamation) assigned management responsibility of the Monument to the Secretary of the Interior, in consultation with the Secretary of Commerce. The proclamation further states that the "Secretary of Commerce shall have the primary management responsibility . . . with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 et seq.) and any other applicable authorities." The Proclamation provides that submerged lands that are granted to the CNMI "but remain controlled by the United States under the Antiquities Act may remain part of the monument" for coordinated management with the CNMI. As envisioned by the Proclamation establishing the Monument, the Administration remains committed to protecting the outstanding resources in the waters surrounding the CNMI's three northernmost islands.

Specifically, the Department strongly recommends an amendment to section 3 that addresses the coordination of management as contemplated within the Proclamation, prior to the transfer of the submerged lands within the Islands Unit of the Monument to the CNMI. Such language would protect the Islands Unit of the Monument and at the same time acknowledge the prescient and historic conservation effort of the leaders and people of the CNMI in protecting Uracas, Maug, and Asuncion, and their surrounding waters.

The Department of the Interior strongly supports section 3 and strongly recommends the above-referenced amendment. The Department of the Interior looks forward to the Commonwealth of the Northern Mariana Islands gaining rights in surrounding submerged lands similar to those accorded other territories.

#### *Adjustment of Scheduled Wage Increases in the CNMI*

Section 4 of the bill would slow minimum wage increases in the CNMI by forgoing the increases slated to take effect on September 30, 2013, and 2015. The 50-cent increases scheduled to occur in 2014, 2016 and annually thereafter would remain in effect.

In 2007, the Congress put American Samoa and the CNMI on a path to match the United States minimum wage within a few years. Legislation dictated increases to the minimum wage of 50-cents per year, until parity was achieved.

Due to substantial economic hardship in American Samoa—the closure of one of its two tuna canneries—the law was amended to skip the increases for American Samoa from 2011 through 2014.

Both territories have isolated locations in the Pacific Ocean in neighborhoods of low wages. The CNMI has also suffered the loss of one of its two major industries—garment manufacturing. The purpose of section 4 is to spread out the minimum wage increases for the CNMI to help ensure the survival of island businesses and their employees' jobs. Specifically, section 4 would slow the pace of minimum wage increase until after 2015, when the annual increases would resume, similar to the adjustment made previously for American Samoa.

The Department of the Interior has no objection to section 4.

#### *CNMI Immigration Issues*

Section 5 deals with fees and funding vocational education curricula and development of educational entities, and a five year extension of the statutory period (through December 31, 2019) for lowering the number of CNMI-only foreign transitional worker permits to zero.

Subsection 1 of Section 5 requires the CNMI government to provide a plan for the expenditure of educational funds collected (as required by statute) by the Department of Homeland Security as a supplemental fee on CNMI employers' transitional worker immigration petitions and provided to the CNMI government, and a projection of the effectiveness of these funds in finding employment for U.S. workers. Every two years the Secretary of Homeland Security must report on the effectiveness of meeting the goals set out in the annual plan.

Subsections 2 and 3 of section 5 also relate to CNMI-specific immigration provisions contained in the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA shifted administration of immigration in the CNMI from CNMI to Federal authority, but also established a five-year transition period to allow the CNMI economy to adjust to the new regime.

Coincident with change in World Trade Organization rules and the demise of the CNMI garment industry in the late 2000s, the CNMI's economy has struggled. The resulting tax and revenue decline has been challenging for the CNMI government.

The Department of the Interior has always supported measures that promote economic development in the CNMI, and in the CNRA, the Congress specifically directed the Department of the Interior to aid the CNMI economy during the immigration transition. As a result, in 2011, the Department conducted a Forum on Economic and Labor Development (FELD) in Saipan, designed to elicit from the CNMI community ideas and goals for the CNMI economy. The Department later provided \$1 million in grant funds to implement the FELD findings.

While it cannot yet be characterized as an economic rebound, statistics from recent months show increases in CNMI tourism and hotel bookings.

Nevertheless, businesses and CNMI government officials are concerned that if the approximately 12,000 foreign workers resident in the CNMI under the transitional worker program were forced to leave at the end of 2014, the reduction would have significant adverse consequences for the CNMI economy.

Under the CNRA, the Secretary of Labor already has the discretion to extend the CNMI-only transitional worker program by up to five years if warranted by economic conditions. The Department of Labor is now conducting studies that will inform that decision.

The Department of the Interior defers to the Departments of Labor and Homeland Security regarding important aspects of section 5.

#### *Study of Electric Rates in the Insular Areas*

Section 6 of the bill is entitled "Study of Electric Rates in the Insular Areas." The legislative language that follows, however, goes much beyond a study. The language calls for an "energy action plan" for each territory and freely associated state (FAS) and implementation of those plans. The legislative language is largely duplicative of section 604 of Public Law 96-597 (48 USC 1492), except that, the Secretary of the Interior would be responsible for the described energy effort, rather than the Secretary of Energy.

It should be noted that eight years ago, Interior undertook a comprehensive effort to study energy needs in the U.S. territories and FAS, and to develop viable energy plans (which included an appropriate role for renewable energy sources) for each jurisdiction. Currently, the Office of Insular Affairs is supporting broad renewable energy planning efforts through the National Renewable Energy Laboratory (NREL)

financed by our Technical Assistance Program. The President's 2014 budget for OIA includes funding for specific energy projects under Empowering Insular Communities to implement a number of the NREL recommendations.

The Department of the Interior opposes section 6 of S. 1237 as being unnecessary because it is duplicative of section 604 of Public Law 96-597, and of current efforts to implement the energy plans that have been and are being developed.

#### *Chief Financial Officer of the Virgin Islands*

Section 7 includes a provision for establishing a chief financial officer (CFO) for the Virgin Islands, and a plebiscite of Virgin Island voters on the issue.

In the mid-2000s, an earlier CFO bill would have placed significant restrictions on local self-government and the powers of the elected Governor of the Virgin Islands as established in the Virgin Islands Revised Organic Act. A revised CFO bill was the subject of a hearing last year in the House of Representatives. The Department of the Interior had no objection to that bill because it would have constituted "only de minimus interference with self-government in the Virgin Islands." We noted that the purpose of the bill was to rein in deficit spending, but that the bill did not require a balanced budget.

S. 1237 adds a new provision requiring a plebiscite on the question of whether or not a chief financial officer position should be established. This extra layer of approval for the CFO position by the voters of the Virgin Islands would demonstrate acceptance of the concept or not, by the citizens of the Virgin Islands.

The Department of the Interior has no objection to the enactment of section 7.

#### *Reports on Estimates of Revenue*

Section 8 would require the governors of American Samoa, the Northern Mariana Islands, Puerto Rico, Guam and the Virgin Islands each to submit a report on the process for developing annual estimates of the government's revenues and expenditures and any supporting documents and schedules to appropriate committees of the Congress and the Comptroller General of the United States, and also require the Comptroller General to submit a report evaluating the reasonableness of those estimates and if necessary submit recommendations for improving the processes for developing the estimates to appropriate committees of the Congress.

Over the years, in statements related to the legislation that would create a Chief Financial Officer of the Virgin Islands, the Department of the Interior has stated that all the territories have had difficulty with rising debt due to problematic budgeting processes. Section 8 would provide a framework for studying the budget processes of the territories.

Because the governors of each of the territories would be so intimately involved, the Department of the Interior defers to the opinions of the governors of each of the United States territories with regard to this provision.

#### *Low-Income Home Energy Assistance Program*

Section 9 would provide that under the Low-Income Home Energy Assistance Act of 1981 energy assistance would be 300 percent of the normal rate when applied to households located in the Virgin Islands in years 2014 through 2017.

United States Virgin Islanders are struggling with some of the highest electric rates in the U.S. Currently, the residential rate in the Virgin Islands is 50 cents per kilowatt hour, with the commercial rate at 54 cents per kilowatt hour. These high Virgin Islands rates contrast significantly with rates elsewhere in the United States, which average 12.8 cents per KWH.

Considering both the high poverty rates and high electric rates in the Virgin Islands, one can understand the extreme difficulty under which many Virgin Islands residents are living. Many residents cannot afford to keep the lights on, and businesses are closing.

Given the fact that electric rates in the Virgin Islands are five times that on the U.S. mainland, a LIHEAP payment of three times the mainland amount for a limited, four-year period of time would not be unreasonable.

In addition, the territories of Guam, CNMI, and American Samoa are also paying significantly higher residential rates than in the rest of the United States. The rates are 24.5 cents per KWH on Guam, 32 cents per KWH in the CNMI, and 39 cents per KWH in American Samoa.

The Department of the Interior has no objection to the enactment of section 9, but suggests, based on the rates paid by each of the territories, that a formula for Guam, CNMI, and American Samoa be included in this section as well.

#### *Castle Nugent National Historic Site Establishment*

Section 10 would establish the Castle Nugent National Historic Site on the island of St. Croix in the U.S. Virgin Islands as a unit of the National Park System. This

proposed national historic site was the subject of a special resource study, completed in 2010, that found that the site met the National Park Service's criteria for inclusion in the National Park System.

This 2,900-acre site is located along the arid southeastern shore of St. Croix, about three miles south of the town of Christiansted. The terrain is mostly rolling and hilly with a mixture of dry forest, native vegetation, and rangeland that offers picturesque views to the Caribbean Sea and to distant parts of the island. Establishing this site as a unit of the National Park System would provide the opportunity to preserve and protect this outstanding Caribbean cultural landscape and interpret the cotton era and related agricultural themes that have been instrumental in the development of St. Croix and the Virgin Islands. It would also help protect five pre-Columbian archeological sites, two of which are among the oldest sites on St. Croix.

The Department supports this section with an amendment. The recommended amendment, which would insert the standard language used in bills establishing new areas of the National Park System, is to strike "consists" on line 12 of page 19 and insert "shall consist".

#### *St. Croix National Heritage Area*

Section 11 would establish the St. Croix National Heritage Area on the island of St. Croix. A feasibility study completed in 2012 by the National Park Service found that this proposed heritage area, which would include the entire island, met the Service's interim criteria for designation as a National Heritage Area. The heritage area would be focused on five themes: early cultures, slavery and emancipation, the influence of seven colonial powers, the island's unique geography and natural environment, and modern-day cultures.

The Department supports the objectives of this section. However, the Department recommends that Congress enact program legislation that establishes criteria to evaluate potentially qualified National Heritage Areas and a process for the designation, funding, and administration of these areas before designating any additional new National Heritage Areas. There are currently 49 designated national heritage areas, yet there is no authority in law that guides the designation and administration of these areas. Program legislation would provide a much-needed framework for evaluating proposed national heritage areas, offering guidelines for successful planning and management, clarifying the roles and responsibilities of all parties, and standardizing timeframes and funding for designated areas.

If the committee moves forward on S. 1237 with section 11 included, we would like to recommend amendments to some of the terms used in this section. We would be happy to provide the committee with our recommended amendments.

#### *Guam War Claims Review Commission*

Section 12 would approve payments and a funding source for claims arising from the World War II Japanese occupation of Guam.

Sixty-nine years ago this month, U.S. forces stormed the beaches of Asan and Agat on the island of Guam. The fierce battles in the weeks that followed would end Japan's two-and-a-half year occupation of Guam. Approximately a thousand United States national residents of Guam died during the occupation; the people of Guam were subjected to summary executions, beheadings, rapes, torture, beatings, forced labor, forced march and internment.

With the passage of the Guam Meritorious Claims Act of 1945, the people of Guam became the first group of United States nationals to be made eligible for payment of claims by the United States for damages suffered during the war. In the years that followed, however, many on Guam came to question whether the Guam Meritorious Claims Act, as implemented, sufficiently compensated the people of Guam for their suffering.

The Guam War Claims Review Commission, created pursuant to legislation passed in 2002, was charged with determining whether there was parity in the treatment of Guamanians' World War II claims as compared with the claims of U.S. citizens or nationals in other areas occupied by Japan during the war. The commission determined that Guamanians did not receive treatment in parity with other United States individuals who similarly suffered during World War II.

This section would provide payments to persons now living on Guam who actually suffered the Japanese occupation during World War II. It would not provide payments to heirs of survivors of the Guam occupation, but would compensate heirs of the approximate 1,000 United States national residents of Guam who died during the Japanese occupation.

Funding for this section would be provided from the Guam Organic Act section 30 funding that is in excess of section 30 funding for fiscal year 2012.

The Department of the Interior recommends that the committee seek broad counsel among leaders in Guam regarding the financing of claims under section 12.

*Use of Certain Expenditures as In-Kind Contributions*

Section 13 would allow territorial and Hawaii government costs ascribed to the migration of freely associated state (FAS) citizens to Guam, Hawaii, the CNMI and American Samoa to be valued and applied as in-kind local matching contributions for Federal programs.

With amendments to the Compacts of Free Association legislation passed in 2003, the Congress appropriated \$30 million annually to be distributed among the four affected U.S. jurisdictions based on an enumeration of FAS citizens in those four jurisdictions. The Congress provided an additional \$5 million in each of fiscal years 2012 and 2013. It is uncontested that the impact of migration to Guam, Hawaii, CNMI and American Samoa exceeds the amounts appropriated.

Under section 13 of S. 1237, amounts above the annual payments could be classified as eligible amounts to be drawn on as “in-kind contributions” that would aid the affected jurisdictions in satisfying matching requirements for Federal programs.

In addition, under the compact legislation, the governors of Guam, Hawaii, the CNMI and American Samoa are invited annually to provide reports on the impact of migration from the freely associated states of the Marshall Islands, the Federated States of Micronesia, and Palau on their respective jurisdictions. Guam produces such a report annually; Hawaii sporadically; American Samoa and the CNMI do not. The Department of the Interior forwards these reports to the Congress.

Among the governments, there is no consistent format or standards for inclusion of costs, and no inclusion of benefits that FAS citizens provide the respective jurisdiction. In its 2012 report on FAS migration, the Government Accountability Office (GAO) stated:

. . . some jurisdictions did not accurately define compact migrants, account for federal funding that supplemented local expenditures, or include revenue received from compact migrants.

The GAO recommendations did not include specific recommendations necessary to achieve accuracy in reporting impacts of the compacts.

The Department of the Interior has urged the governors to develop consistent standards of reporting among themselves, including the definition of FAS migrants, accurate accounting of migrant costs to the affected government, and benefits received by the affected jurisdiction from employment, taxation and consumption. To date, they have not done so.

Assuming that accurate reporting is achieved in future reports, the accuracy of past reports remains a problem for calculating the amounts from which “in-kind contributions” could be drawn.

Without establishing standards, the language in section 13 is untenable. For example, subsection (b) calls on the Secretary of the Interior to determine amounts eligible for “in-kind” classification “based on a reasonable estimate of the amount of impact expenditures for the Freely Associated States.” The words I quoted give no direction for the Secretary to arrive at an estimate and the expenditures are not stated to be those of the four U.S. affected jurisdictions. Specific and exacting standards are missing.

The Department of the Interior opposes the enactment of section 13.

*Waiver of Local Matching Requirements*

Section 16 would amend section 501 of Public Law 95-134, which allows waiver of local matching requirements for Federal grants for U.S. territories, to require the waiver of all matching of \$500,000 or less.

The original waiver provision, giving all federal agencies permissive authority to waive local matching requirements of \$200,000 or less, has been in effect since 1977. Since 1980, statute has required the matching waiver for grants of the Department of the Interior. Generally the law has been interpreted not to apply to discretionary grants, because a granting agency could decide, in its discretion, to forgo making the grant if a territory were to insist on the waiver of the match. Such an eventuality would harm the territories.

Considering that more than 30 years have passed since the \$200,000 waiver was established, the increase to \$500,000 would seem appropriate and consistent with inflation over time.

The Department of the Interior has no objection to the enactment of section 16 with regard to grants from the Department of the Interior. We express no view with regard to waiver changes for other Federal agencies.

*American Samoa Citizenship Plebiscite Act*

Section 19 would require the Secretary of the Interior to direct the American Samoa Election Office to conduct a plebiscite on whether or not persons born in American Samoa desire United States citizenship.

Under the Tripartite Convention of 1899, ratified February 16, 1900, Great Britain and Germany ceded claims of the eastern portion of the Samoan Islands to the United States. This portion of the archipelago became known as “American Samoa.” The Matai (the chiefs) of Tutuila and Manu’a, signed voluntary Deeds of Cession in 1901 and 1904, respectively, which were subsequently accepted, ratified and confirmed retroactively by Congress. In 1929, the Congress provided that with regard to the government of the territory of American Samoa, all civil, judicial, and military powers shall be exercised as the President shall direct. In 1951, the President delegated his authority to the Secretary of the Interior.

Under the authority of the Secretary of the Interior, American Samoa adopted a constitution in 1960. The issue of citizenship versus status as a U.S. national was a key issue. The Samoan leaders and people were concerned that U.S. citizenship could cause the equal protection clause of the United States Constitution to interfere with their communal land tenure system, chiefly or matai titles, and the viability of Fono’s Senate due to the selection of Senators from among persons with matai titles.

To protect and ensure continuation of fa’a Samoa (the Samoan way of life), Samoans chose to be U.S. nationals rather than citizens of the United States. Both citizens and nationals owe allegiance to the United States, although the United States Constitution grants certain privileges to citizens, but not persons who are nationals alone.

The United States national status of persons born in American Samoa was upheld on June 26, 2013, by the United States District Court for the District of Columbia in *Leneuoti Fiafia Tuaua et al. v. United States of America et al.* which included the following statement:

To date, the Congress has not seen fit to bestow birthright citizenship on American Samoa, and in accordance with the law, this Court must and will respect that choice.

In the fifty years since the adoption of the original constitution of American Samoa, attitudes of many in the local population of American Samoa may have shifted. The plebiscite called for in section 19 will bring new discussion to these land, matai title and Senate issues. These are issues for the American Samoa polity to discuss and decide.

Should the proposed vote in American Samoa favor citizenship, leaders in American Samoa would then approach the Secretary of the Interior and the Congress, to seek action on the issue.

The Department of the Interior has no objection to the enactment of section 19.

*Marine Turtles*

Section 20 would extend the Marine Turtle Conservation Act of 2004 to United States territories and possessions. Marine turtles are “flagship species” for both local and international coastal conservation. Because marine turtles circumnavigate the world’s oceans to reach their nesting beaches, their conservation must be addressed through global efforts. By focusing on these species and their habitats, we can more adequately conserve and manage ecologically critical coastal and marine habitats around the world.

The Department’s U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (within the Department of Commerce) share jurisdiction for the conservation of marine turtles. The Service focuses conservation activities on nesting beaches while NOAA works to conserve and recover turtles in their marine habitats. The Fish and Wildlife Service also administers the Marine Turtle Conservation Fund, which provides grants to countries with sea turtle nesting beaches on a cost share basis, to implement sea turtle conservation programs. Such international conservation is a key part of the effort to recover and conserve these global species.

The Department of the Interior supports the intent of section 20 to provide greater funding opportunities for turtle conservation in the U.S. territories. However, we are concerned that this change would significantly dilute the limited funds available to implement conservation measures in foreign countries. There are resources already available for sea turtle conservation in the U.S., including the territories. The relatively small amount of Marine Turtle Conservation Fund grants (less than \$1.8 million in FY 2012), which provide critical assistance to our international partners, accounts for about six percent of the overall funds spent by the U.S. on sea turtle

conservation. If applicants in the U.S. are made eligible, this limited amount for critically important international work is likely to be significantly reduced.

#### *Conclusion*

Mr. Chairman, we at the Department of the Interior are pleased that you and the ranking member have introduced the Territorial Omnibus Act of 2013. Despite the fact that the Department cannot support each and every provision, the bill gives an airing to important territorial issues of long standing. We will be pleased to work with the Committee as it finalizes the legislation.

S. 1268

Chairman Wyden and members of the Committee on Energy and Natural Resources, I am pleased to be here today to discuss S. 1268, which would approve the agreement between the Government of the United States and the Government of the Republic of Palau following the Compact of Free Association section 432 review. My colleagues from the Departments of State and Defense will discuss the importance of the United States—Palau relationship as it relates to national security and our policies in the Pacific. My statement today regarding Palau will focus on the financial assistance components of the new agreement with Palau, for which the Department of the Interior will be responsible.

#### *The United States—Palau Relationship*

The Department of the Interior and the Government of Palau have been partners since 1951, when the Navy transferred to the Department of the Interior the administration of the United Nations Trust Territory of the Pacific Islands. Since the end of World War II, Palau has emerged from its status as a war-ravaged protectorate to become a sovereign nation and respected member of the world community. Consistent with the provisions of the 1994 Compact of Free Association, Palau has exercised its sovereignty in accordance with the principles of democracy and in firm alliance with the United States.

The Compact of Free Association has proven to be a very successful framework for United States—Palau relations. The goals of the first fifteen years of the Compact have been met: the trusteeship was terminated; Palau's self-government was restored; a stable democratic state was established; third countries were denied military influence in the region of Palau; and with U. S. financial assistance, a base for economic growth has been provided.

The original financial terms and conditions of the Compact have been fully implemented by the United States and Palau. The United States, through the Department of the Interior, has provided over \$600 million of assistance, including \$149 million used to construct the 53-mile road system on the island of Babeldaob and \$38.7 million for health care and education block grants. Most of the funding, \$400 million, was expended on activities defined under Title Two of the Compact, which included general government operations, energy production, communications, capital improvements, health and education programs and establishment of the Compact Trust Fund.

The Compact Trust Fund was an important feature of U.S. assistance. Capitalized with \$70 million during the first three years of the agreement in the 1990s, the objective of the trust fund was to produce an average annual amount of \$15 million as revenue for Palau government operations for the thirty-five year period fiscal year 2010 through fiscal year 2044. The fund also generated \$5 million in annual operational revenue for Palau since the fourth year of the agreement, totaling \$60 million for the years 1998 through 2009.

Palau has made strong economic gains under the Compact of Free Association. Its growth, in real terms, has averaged just over two percent per year. Palau's governmental services are meeting the needs of its community. Palau has taken control of its destiny and is moving in the right direction.

#### *Compact Review*

As both the United States and Palau began the required Compact section 432 review several years ago, each side took pride in the growth evident in Palau. However, the review, which examined the terms of the Compact and its related agreements and the overall nature of the bilateral relationship, also focused attention on several important issues. The United States and Palau agreed that prospects for continued economic growth relied on four key factors: 1) the viability of the Compact trust fund and its ability to return \$15 million a year; 2) the implementation of fiscal reforms to close the gap between Palau's revenues and expenditures by shrinking its public sector and raising revenue; 3) the promotion of increased foreign investment and private sector growth, and, 4) the continuation of certain United

States assistance, including access to United States Federal domestic programs and services.

From the perspective of the United States, the viability of the Compact Trust Fund was of paramount concern. The economies of Pacific islands are always fragile; their size, distance from markets and relative lack of resources make growth a perennial problem. Although Palau has some relative advantages in contrast to other Pacific island countries, the Compact Trust Fund was established with the intention of providing a relatively secure revenue base for Palau's government through fiscal year 2044. As the 15-year review began, Palau's trust fund, which had earned roughly 9 percent annually since its inception, had suffered significant losses. As GAO reported in 2008, it was uncertain that the trust fund could pay \$15 million annually to the Government of Palau through fiscal year 2044.

#### *Compact Agreement*

The condition of the Compact Trust Fund, the need for fiscal and economic reforms, and the goal of strengthening conditions for private sector growth became the focus of the bilateral review. The Agreement Between the Government of the United States of America and the Government of the Republic of Palau Following the Compact of Free Association Section 432 Review (Agreement) that arose from the 15-year review, will address these concerns, maintain stability, promote economic growth and increase the progress already made under the Compact of Free Association.

The Agreement extends United States assistance, in declining annual amounts, through fiscal year 2024. The total of direct financial assistance to Palau under the Agreement is \$229 million, although \$52.6 million of that amount has already been appropriated for direct economic assistance by congressional action through fiscal year 2013.

Under the Agreement, direct assistance for governmental operations declines annually. The declining amount of assistance is intended to provide an incentive for Palau to develop other sources of local revenue and serves notice that the Palauan government has agreed that it will need to make systemic adjustments to its government in order to live within those same resources.

The Agreement contains five categories of financial assistance for Palau:

**Direct economic assistance.**—The Agreement provides for direct assistance for education, health, administration of justice and public safety, in amounts starting at \$13 million, declining to \$2 million, the last payment, in 2023. As discussed below, this “glidepath” is coupled with a gradual increase in how much Palau can withdraw from its trust fund. The timing of direct assistance payments is conditioned on Palau's making certain fiscal reform efforts. If the United States government determines that Palau has not made meaningful progress in implementing meaningful reforms, direct assistance payments may be delayed until the United States Government determines that Palau has made sufficient progress on the reforms.

**Infrastructure projects.**—Under the Agreement the United States is to provide \$40 million to Palau for mutually agreed infrastructure projects to be decided after implementation has begun.

**Infrastructure maintenance fund.**—Under the Agreement, a trust fund will be established to be used for maintenance of capital projects previously financed by the United States, including the existing Compact Road. During the life of the agreement the United States government will contribute \$2 million annually and the Palau government will contribute \$600,000 annually to the fund. This will protect crucial United States investments in Palau that significantly contribute to economic development.

**Fiscal consolidation fund.**—The United States will have provided grants of \$5 million during each of the first two years of the agreement to help the Palau government reduce its debt. United States creditors must receive priority, and the government of Palau must report quarterly on the use of the grants until they are expended. This fund will also simplify needed economic adjustments to Palau's fiscal policies.

**Trust fund.**—The Agreement increases the size of Palau's trust fund directly and indirectly to bolster the likelihood that the trust fund will yield payments of up to \$15 million annually through 2044. First, the United States will contribute a total of \$30 million in annual contributions through 2022 and contribute \$250,000 in 2023. Second, the government of Palau will delay withdrawals from the fund, drawing \$5 million annually through 2013 and gradually increasing its withdrawal ceiling from \$5.25 million in 2014 to \$13 million in 2023. From 2024 through 2044, Palau is expected to withdraw up to \$15 million annually, as originally scheduled. Under the Agreement, withdrawals from

the trust fund may only be used for education, health, administration of justice and public safety.

*Continuing Cooperation*

The United States and Palau will work cooperatively on economic reform. The Agreement requires the two governments to establish an advisory group to recommend economic, financial and management reforms. Palau is committed to adopting and implementing reforms. Palau will be judged on its progress in such reforms as the elimination of operating deficits, reduction in its annual budgets, reducing the number of government employees, implementing meaningful tax reform and reducing subsidies to public utilities.

Palau's progress in implementing reforms will be addressed at annual bilateral economic consultations. If the government of the United States determines that Palau has not made significant progress on reforms, the United States may delay payment of economic assistance under the Agreement.

The Agreement also continues to provide Palau with access to other United States services and grant programs, including the United States Postal Service, the National Weather Service, and the Federal Aviation Administration. The Postal Service moves mail between the United States and Palau, and offers other related services. Palau maintains its own postal service for internal mail delivery. The National Weather Service reimburses Palau for the cost of operating its weather station in Palau, which performs upper air observations twice daily, as requested, for the purpose of Palau's airport operations and the tracking of cyclones that may affect other United States territories, such as Guam. The Federal Aviation Administration provides aviation services to Palau, including en-route air traffic control from the mainland United States, flight inspection of airport navigation aids, and other services.

The proposed legislation will also allow the continuance of other Federal program services currently available to Palau under separate authorizing legislation, including programs of the Departments of Education and Health and Human Services. The general authorization for Palau to receive such services was created by the Compact, but individual program eligibility has been created by specific laws that include Palau as an eligible recipient.

Even as the Administration awaits congressional approval of the agreement, the Department of the Interior has remained engaged with Palau. Palau participates in OIA's technical assistance and other programs, and is a partner in regional forums supported by OIA. Palau is also receiving assistance from OIA to repair sections of the Compact Road.

The Administration looks forward to continuing the United States partnership with Palau. The Department of the Interior is proud of the contribution the United States has made to the success we call Palau. We look forward to future progress over the period of the new agreement.

The CHAIRMAN. Thank you.  
Mr. Singh.

**STATEMENT OF VIKRAM J. SINGH, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SOUTH AND SOUTHEAST ASIA, OFFICE OF THE SECRETARY OF DEFENSE FOR POLICY, DEPARTMENT OF DEFENSE**

Mr. SINGH. Thank you, Chairman Wyden for inviting me to testify with my colleagues from State and Interior to talk about the importance of the Palau Compact Agreement to the Department of Defense.

Since its enactment in 1994 the Compact has served an important piece of our security strategy in the Asia Pacific region providing the United States with critical access, influence and the strategic denial of access to other regional militaries.

Our compact with Palau coupled with our Compacts to the Federated States of Micronesia and the Republic of the Marshall Islands enable DOD to maintain critical access in the Asia Pacific. The United States exercises full authority over and responsibility for the security and defense of Palau, an arrangement similar to what we have with Micronesia and the Marshall Islands. With this

authority and responsibility the United States is entitled to sole military access to the lands, water and air space of Palau.

Our current security arrangement under the compact affords us expansive access which is increasingly an important asset in the defense and security interests of the United States in the Asia Pacific region. Given the increasing importance of the Asia Pacific overall, we are in the early stages of a rebalance toward the region and U.S. presence and power projection in the Asia Pacific is increasingly essential to our national security interests. The U.S./Palau compact, therefore, is a strategic asset for U.S. presence in the Western Pacific.

Loss of the defense rights and unfettered access granted to the United States under the compact would certainly adversely affect U.S. national security. The relationship we have with Palau is unique and reliable and it's an important piece of our overall efforts to implement this rebalance and to have a steady and strong security presence in the Asia Pacific.

Failure to implement the review agreement would also send a poor signal to the region about the United States' commitment and ongoing commitment to regional security.

Passage of the proposed legislation approving the results of the 15 review would ensure that our important security agreement continues and reassure Palau of our sustained commitment to Palau and its people and our shared interests in regional and global security.

So I urge you and the members of the committee to support the agreement and to support the proposed legislation.

Thank you.

[The prepared statement of Mr. Singh follows:]

PREPARED STATEMENT OF VIKRAM J. SINGH, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR SOUTH AND SOUTHEAST ASIA, OFFICE OF THE SECRETARY OF DEFENSE FOR POLICY, DEPARTMENT OF DEFENSE

Chairman Wyden, Ranking Member Murkowski, members of the Committee, thank you for the opportunity to appear before you to discuss the importance of the Palau Compact Agreement.

Since its enactment in 1994, the Compact has served as an important foundation for our security strategy in the Asia-Pacific region, providing the United States with critical access, influence, and strategic denial of access to other regional militaries. Our Compact with Palau, coupled with our compacts with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), has enabled DoD to maintain critical access in the Asia-Pacific region. The Compact of Free Association between the United States and Palau is important to allowing the Department to continue to benefit from the security arrangement afforded by the Compact. Today, I would like to discuss the importance of Palau and the Compact to preserving U.S. national security interests in the Asia-Pacific region.

#### PALAU'S CONTRIBUTIONS TO U.S. AND GLOBAL SECURITY

Let me begin by discussing Palau in the context of the regional security environment in the Western Pacific. The Pacific Islands region is sparsely populated, physically isolated, and geographically widespread. However, Palau lies at a pivotal crossroad in the Pacific, an area near critical sea lines of communication and rich fishing grounds. It is also located directly in the so-called "Second Island Chain" from Mainland Asia, relatively close to all of the major East and Southeast Asian powers. With our strategic interests and equities shifting more toward the Asia-Pacific region, having Palau as a strong partner in the Pacific is increasingly important to maintaining military, as well as political and diplomatic, leadership in this quickly evolving strategic environment.

We must take note of critical security developments in the Pacific that require the Department's sustained presence and engagement. Broadly speaking, numerous countries are actively courting Pacific Island States, seeking security opportunities that may challenge the security status quo in the region, by increasing their economic, diplomatic, and military engagement with the island States. These critical security developments require sustained U.S. presence and engagement in the region. Our relationship with Palau would be reinforced under the Compact and would ensure the United States the extraordinary advantage of sole military access to Palau. For these reasons, it is important for the U.S. Government to sustain this advantage.

Since the Compact of Free Association between the Government of the United States of America and the Government of Palau entered into effect in 1994, the United States has taken full responsibility for the security and defense of Palau. This unique security arrangement has created a steadfast and reliable partner that helps the United States advance its national security goals in the region.

#### PALAU IN THE REGIONAL SECURITY CONTEXT

I would also like to highlight the extraordinary service of Palauans in the U.S. Armed Forces and contributions to U.S. security. Under the provisions of the Compact, Palauans are able to serve in the U.S. Armed Forces. Sadly, six Palauans have sustained casualties fighting on the battlefield in Afghanistan and Iraq since the terrorist attacks of September 11, 2001. Their sacrifice in the defense of the U.S. homeland as well as U.S. and Coalition security interests around the world should not go unnoticed. Furthermore, in 2009, Palau stepped up to offer resettlement of some of the detainees from Guantanamo Bay at a time when other countries were hesitant to take these individuals.

Most notably, our commitment to the Compact with Palau allows the Department to leverage Palau's strategic geopolitical position to sustain U.S. security interests in the region. The United States exercises full authority over and responsibility for the security and defense of Palau, an arrangement similar to those that we have with the Federated States of Micronesia and the Republic of the Marshall Islands. With this authority and responsibility, the United States is entitled to sole military access to the lands, water, and airspace of Palau. Our current security arrangement affords us expansive access, which will be an increasingly important asset in the defense and security interests of the United States in the Asia-Pacific region in coming years. The Department recognizes the strategic value of the Compact, and we hope to continue to utilize it to serve our national security interests.

We have growing national security interests and equities in the Western Pacific, a region that is traditionally overlooked and undervalued. Together with the two other Compact States, the Federated States of Micronesia and the Republic of the Marshall Islands, Palau forms part of an important security zone under exclusive U.S. control that spans the entire width of the Pacific when we include Hawaii and the U.S. territories—Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Palau's location makes it an important part of the U.S. strategic presence in the Asia-Pacific. The Palau Compact affords us strategic positioning in a country with a unique geopolitical position in the Asia-Pacific region. The region's lack of political and security infrastructure has given rise to a trend of growing transnational crime, which underscores the importance of continued DoD engagement in the Western Pacific. With this in mind, the Department seeks to develop creative ways to remain strategically engaged in the region.

#### U.S.-PALAU DEFENSE RELATIONS

Recognizing that Palau has no military and only limited law enforcement capabilities and resources, the Department's engagement with Palau primarily focuses on helping them develop maritime security and humanitarian assistance capabilities.

First, maritime security has been one of the most fruitful areas of cooperation between our two nations. Palau's Exclusive Economic Zone (EEZ) is part of the Pacific's richest fishing grounds and has traditionally faced serious problems with foreign exploitation of the fishery resources. Large numbers of far-ranging fishing vessels from other Pacific nations threaten encroachment, seeking access to Palau's abundant and lucrative tuna fishing areas.

To combat illegal fishing, the U.S. Coast Guard has entered into a shiprider agreement with Palau, which enables Palauan security officials to embark on transiting U.S. Coast Guard vessels to conduct maritime patrol and enforce Palauan fishing laws in its enormous, under-patrolled EEZ. This kind of shiprider agreement allows the U.S. Coast Guard to play a more active role in developing partner law enforcement capacity of the island States.

Second, the Defense Department's humanitarian programs have been very well-received in island communities. These programs primarily focus on the removal of explosive remnants of war from the World War II era, humanitarian projects, and prisoner of war/missing in action operations. DoD's 12-person Civic Action Team rotates through Palau, conducting small-to medium-scale humanitarian and civic action projects in the health, education, and infrastructure areas.

Additionally, DoD leads large-scale, multinational, pre-planned humanitarian missions, such as the U.S. Air Force's Pacific Angel and U.S. Navy's Pacific Partnership, which include medical and engineering projects in remote regions that are conducted in close coordination with local communities. For example, in the summer of 2010, the USS BLUE RIDGE (LCC-19) treated more than 1,900 Palauans, completed 14 community service projects, and spent more than 1,000 man hours across the three Palauan states of Koror, Peleliu, and Angaur as part of Pacific Partnership 2010. Also, the longest running humanitarian campaign in the world, Operation Christmas Drop, which provides air-dropped supplies to the people of remote islands each year, celebrated its 60th anniversary in December 2012 and continues to assist the remote islands of Palau each year. These humanitarian missions are evidence that the Department's engagement in Palau extends well beyond traditional security parameters.

#### CONCLUSION

In conclusion, U.S. presence and power projection in the Asia-Pacific region continue to be essential to our national security interests. The U.S.-Palau Compact is a strategic asset for U.S. presence in the Western Pacific, an increasingly important region. Loss of the defense rights and unfettered access granted to the United States under the Compact would adversely affect U.S. national security. Our relationship with Palau is unique and reliable. Passage of the proposed legislation approving the results of the 15-year Compact Review would ensure this important security agreement continues, and would reassure Palau of our sustained commitment to Palau and its people and of our shared interest in regional and global security. I urge you to support the continued security agreement the United States has developed with Palau over the years and ask for your support of the proposed legislation.

Thank you, and I look forward to answering your questions.

The CHAIRMAN. Very good. Thank you, Mr. Singh.  
Mr. Kagan.

#### **STATEMENT OF EDGARD KAGAN, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE**

Mr. KAGAN. Mr. Chairman, we're very grateful to you for the opportunity to come before you and the committee. We're also very grateful to you for your personal interest and your leadership on the issue of Palau.

You know, you have spoken very eloquently, as has Ranking Member Murkowski, about Palau's importance to the United States and why the relationship has been beneficial to both countries. So there's no need to repeat that.

What I will say is that 3 years ago the State Department, as called for under the original 1994 Palau Compact of Free Association, negotiated an agreement to extend and revise the assistance under the compact to provide a more economically sustainable future for Palau. This was done in very close consultation with Congress, as well as, obviously, with the Departments of Interior and Defense and was mandated under the original compact.

We have since worked very closely with Congress to try and find a pathway to be able to move forward on this because I think we all share the goal of implementing the agreement and fulfilling our commitments.

I think we have worked closely within the Administration, with Congress, because we all recognize the importance to doing this. Time is starting to drag.

The relationship is important to us. It's important from a foreign policy perspective and to the Department of State because this is an example of U.S. commitment. The region is watching how we treat this.

We've made a commitment. We have yet to fulfill it. So we believe it is important to move forward as quickly as possible.

Should note that we believe that the agreement, as Acting Assistant Secretary Sobeck has said, is actually very good for both Palau and for the United States. It deals with some issues that have been raised originally, with the original agreement and has, we believe, has strengthened it and make it better for both sides.

One of the key goals for the compact was to get Palau to the point where it would be able to stand on its own and be economically viable. We think Palau has made tremendous strides on self governance and democracy. We think that rapid implementation of the agreement will allow it to continue working on economic sustainability.

We do believe that U.S. credibility is at stake and that moving on this will strengthen our overall approach toward the Asia Pacific and strengthen our rebalance to have greater emphasis on the region.

We have worked closely with you and will continue to do so and really appreciate your strong support for this.

Thank you.

[The prepared statement of Mr. Kagan follows:]

PREPARED STATEMENT OF EDGARD KAGAN, DEPUTY ASSISTANT SECRETARY OF STATE,  
BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE

Chairman Wyden, Ranking Member Murkowski, and Members of the Committee, thank you for inviting me to appear before you today to testify on the importance of our bilateral relationship with Palau as well as to discuss the Compact with Palau and proposed legislation approving the results of the mandated 15-year review of the Compact. Let me just take a moment to thank you for introducing S.1268, which is identical to the legislative language proposed by the Administration to approve the Agreement.

Our relationship with Palau is a key aspect of the Administration's focus on our engagement, based on our history, our values, and our national interest, with the Asia-Pacific region, and specifically on ensuring that we increase our engagement with Pacific Island nations as we look forward to what the President has called the "Pacific Century." I know that several members of the Committee met recently with the President of Palau, Tommy Remengesau, Jr., and members of the Palau legislature, during his visit to Washington last month. Secretary Jewell, several other members of the Administration and I met with his team to discuss this legislation, and other important issues in our relationship, during that visit. I was fortunate during the first few weeks in my current position, almost exactly one year ago, to be able to travel with then-Assistant Secretary for East Asian and Pacific Affairs Kurt Campbell to the region, including to Palau. Secretary Clinton's participation at the Pacific Islands Forum in August 2012 was the first by a Secretary of State in its 41-year history and marked a historic high-water mark of engagement by the Administration with our Pacific partners, including Palau. In Palau, I was able to meet with several senior Palauan government officials, who repeatedly asked about the status of the legislation, passage of which is their highest priority in working with the United States. All of these events and meetings have demonstrated the excellent relationship we enjoy with the people of Palau, the genuine friendship they share with the United States and the importance the Administration places on this relationship.

## PALAU: A FRIEND AND RELIABLE PARTNER

Mr. Chairman, the vast stretch of the Pacific and the island countries that reside within it share an integral connection to our western border and are critical to our national security. Linking many of our close friends and allies, from Japan and Australia to Palau, Papua New Guinea, and Tonga, the Pacific region forms a crucial security arc that stretches from California to the Philippines, from Alaska to New Zealand. Our presence and ties to our partners in the Pacific not only safeguard our security interests, they also guarantee access to the critical sea lanes through which much of our trade flows. Among our many friends and partners in the region, we have perhaps none stronger than Palau, a country for which we paid a steep price in blood and treasure to liberate in 1944.

Our relations with our Pacific partners are unfolding against the backdrop of a shifting strategic environment, where emerging powers in Asia and elsewhere seek to exert a greater influence in the Pacific region, through development aid, people-to-people contacts, and security cooperation. There is continued uncertainty in the region about the United States' willingness and ability to sustain the robust forward presence in the Pacific that has been a hallmark of much of the last 60 years. That is why the Administration has put such an effort into increasing our engagement not only with mainland and maritime Asia, but with the Pacific as well.

With respect to our foreign policy goals in the region, I think we have two critical tasks that touch on our historic relationship with Palau. First, we have to sustain and reinforce our full authority and responsibility for the security and defense of Palau. We have no greater responsibility in the eyes of the Palauan people, and I know that we, and the other federal agencies that work with Palau, take that responsibility very seriously. Second, we have to ensure that our partners in the Pacific, including Palau, continue to work with us and support our common goals in regional and multilateral fora, on everything from fisheries management to human rights to countering the proliferation of weapons of mass destruction.

Under the Compact of Free Association, the United States provides for the security of Palau, which occupies a strategic position in the Western Pacific. This security relationship gives us access to Palau and its waters, along with the critical authority to deny such access by military forces and personnel of other nations. While we have welcomed for many decades a peaceful and positive approach to relations in the Pacific by all parties, the relatively modest annual cost associated with the proposed legislation is leveraged many times over in the important strategic advantages this arrangement confers on the United States.

As a result of our security guarantee, Palau does not maintain its own military forces, but under the terms of our Compact, their citizens are eligible to, and do, serve voluntarily in the U.S. Armed Forces. Palauan citizens volunteer in the U.S. military at a rate higher than in any individual U.S. state. Approximately 500 Palauan men and women serve in our military today, out of a population of about 14,000. We are grateful for their sacrifices and dedication to promoting peace and fighting terrorism. Palau has deployed soldiers for U.S. coalition missions and participated in U.S.-led combat operations in the world's most difficult and dangerous places, including Afghanistan and Iraq, where seven Palauans have lost their lives in combat.

Palau's Ambassador to the United States, Hersey Kyota has a son, who is a staff sergeant in the Army and a daughter, who is also a staff sergeant in the Air Force. He also has one nephew, who is a sergeant in the Marine Corps and another nephew in the Army. Kyota also has other close relatives in the U.S. Armed Forces. The son of Minoru Ueki, Palau's Ambassador to Japan, serves in the U.S. Army. Palau Paramount Chief Reklai has a daughter and son in the Army. Similarly, many other Palauan sons and daughters of other government officials and of ordinary Palauan citizens served honorably in U.S. military units since the Compact has been in place.

In addition to our specific responsibility for the safety and security of the Palauan people under the Compact, given the wide range of U.S. strategic interests and equities in the Western Pacific, security developments in the region require our sustained presence and engagement. The Reagan Ballistic Missile Defense Test Site on Kwajalein Atoll, the presence of U.S. Armed Forces, including the U.S. Coast Guard, in Guam and in the waters of the Pacific, and our disaster relief operations throughout the region are all crucial to peace and security not only for the region, but for the United States. Keeping our commitments to Palau, as reflected in S.1268, reinforces our defense posture in the Western Pacific, and therefore our strategic interests. Working closely with the Palauan government, we are able to better protect and conserve its resources, while our access to Palauan waters, lands, airspace, and

its Exclusive Economic Zones (EEZ), facilitate mutual economic benefits and allows us to guard and protect our long-term interests in the region.

With respect to the second goal of maintaining and strengthening our relationship, Palau is among our strongest supporters in regional and multilateral fora. In the former, Palau has been an ardent advocate for enhanced U.S. participation and engagement in the Pacific Islands Forum, the Secretariat of the Pacific Community and other regional bodies. Palau has been a constructive partner in our successful effort to work with Pacific Island nations to extend, and eventually renew, the South Pacific Tuna Treaty.

At the 67th General Assembly of the United Nations in 2012, Palau's voting coincidence with the United States on all votes was approximately 97 percent, which is markedly higher than 74 percent for the United Kingdom, 71 percent for Australia, 57 percent for Japan, and 61 percent for the Republic of Korea. Despite an increase in assistance from others interested in enhancing their engagement with the region, such as China, Russia, and the Arab League nations, Palau has not only supported the United States on Israel and Cuba-related votes but was one of only a handful of nations that voted with the United States on the divisive motion to grant Palestine "non-member observer state" status in the UN. Palau has supported UN resolutions seeking to combat the spread of weapons of mass destruction, and joined in efforts to address systematic human rights abuses in North Korea, Syria, and Iran.

#### OUR PARTNERSHIP EXTENDS BEYOND DEFENSE

The importance of our strong relationship with Palau is not limited to defense. We work closely with Palau in the fight against international crime and terror. In 2009, Palau resettled six ethnic Uighur detainees from Guantanamo, the first country to stand up to support our efforts, when few other countries were willing to do so. Palau was our first island partner to sign the U.S. ship rider and ship-boarding agreements that are successfully increasing maritime surveillance and law enforcement cooperation in the Pacific Islands.

#### SHARED RESPONSIBILITY AS A COMPACT PARTNER

The original process that led to our Compact with Palau was based on a solemn promise to help this young nation through financial, security, and other assistance to achieve self-governance and a sustainable economic development path. The effort that has gone into the 15-year Compact review and the positive contribution of Members of both chambers of Congress to work towards implementation of those arrangements is a symbol of our good faith and partnership, not just in Palau, but also among all our Pacific partners.

The timing of this review could not be more important. We are now at a point where the goal of self-governance and democracy in Palau is firmly in place. The goal of sustainable economic development and independence, however, remains a work in progress. The tiered nature of the support agreed to in this 15-year review agreement is designed to reduce Palau's dependence on U.S. direct economic assistance and assist Palau in moving towards sustainable economic independence. Importantly, it also requires the Palauan government to continue undertaking serious economic and fiscal reforms, and, should the United States determine that progress towards such reform is inadequate, we are able to withhold further assistance until they are implemented.

Our Compact with Palau took effect in 1994. It does not have a termination date and requires a review on the 15-year, 30-year, and 40-year anniversaries. The direct economic assistance provisions of the Compact, however, expired on September 30, 2009. Our two governments worked closely over 20 months of discussions and negotiations to conclude the 15-year review, which resulted in an Agreement, signed by former Deputy Assistant Secretary Frankie Reed and former President Toribiong in September 2010. If approved, S. 1268 will implement the outcomes of that Review and is the manifestation of the shared commitment between our two governments. In support of our relationship with Palau, the Departments of Defense, State and Interior resubmitted draft legislation to Congress. The Agreement provides a glide path for Palau to move from reliance on the over \$18 million it has been receiving to a sustainable \$15 million level, provides for U.S. contributions to the Trust Fund from FY 2013 through FY 2023 and decreases the amount Palau may withdraw from the Trust Fund during this period, to allow the Trust Fund to grow. The Agreement has other provisions that supplement the Compact, resulting from a review of how the Compact worked over its first 15 years. The Agreement will also require Palauan nationals coming to the United States under the Compact to have

machine readable passports (instead of allowing them to come to the United States without passports).

If the bilateral Agreement between our two countries is not implemented, the trust fund would be unable to provide a steady outlay of \$15 million a year, from now until 2044, which was the intended purpose of the Compact negotiators, backed by Senate and House concurrence, in the 1980s. To ensure smooth continuation of our bilateral relationship as well as the continued economic development and advance of its self sufficiency, it is crucial we provide Palau the assistance agreed to in the Compact review.

#### SUPPORTING PALAU'S TRANSITION TO INDEPENDENCE

Our history with Palau began in bloody battle in 1944. It was a sense of duty, and the understanding that Palau was important then to our strategy in the Pacific, that led thousands of Marines ashore to free Palau from colonialism and occupation. Palau remains important now, and that same duty has led the United States down a long road of partnership with the people of Palau from liberation to trusteeship and, finally, to independence. That steadfast commitment to our friends has been noted not just in Palau, but across the Pacific.

Shortly after the end of World War II, the United Nations assigned the United States administering authority over the Trust Territory of the Pacific Islands, which included Palau and island districts of Micronesia that we had liberated from Japanese occupation. Palau adopted its own constitution in 1981, and the governments of the United States and Palau concluded a Compact of Free Association that entered into force on October 1, 1994.

With a government modeled on our own, Palau shares our goals for human rights and democracy throughout the world. Palau has shown maturity of a much older nation in its democratic processes, which is a testament to the commitment to strong values the people of the Pacific have, and reinforces the value of the Compact as a vehicle for transition.

Palau has been a staunch ally to the United States, and it is essential we stand by our commitment to the people of Palau. The Palauan people have been loyal and dedicated partners, but they are concerned about their future and that of their grandchildren. Palau is as interested in regional and international security as we are. Failing to affirm the results of the 15-year review of the Compact with Palau is not in our national interest. We appreciate the interest and leadership of this Committee in considering this legislation promptly and hope both the House and the Senate will pass it before the end of the year.

Senator Inouye of Hawaii was perhaps the most important example to the people of the Pacific of the American generation that fought in World War II and its aftermath. As his generation passes and other emerging powers seek to increase their influence in the region, passage of this legislation will send a reassuring signal that the United States is and will be engaged in the Pacific and will remain a faithful friend and ally through both good and challenging times.

#### THE IMPORTANCE OF IMPLEMENTING THE AGREEMENT

Mr. Chairman, Secretary Kerry, and others in this Administration deeply appreciate not only the rich and historic World War II legacy of the Pacific, but also the continuing strategic role those islands and waters play globally. The Administration places great importance on continuing our strong alliance with Pacific Island partners. I recently visited the battlefield of Peleliu, where more than 1,700 U.S. Marines and other servicemen were lost liberating the island, a necessary step towards the eventual liberation of the Philippines and the seizure of other key island bases that helped bring the war to a close. I met with Palauans who are working with partners in the United States to identify personal effects that still remain on the battlefield and to return them to family members in the United States nearly seventy years later. These efforts are emblematic of our shared history and the deep connections that have been forged in the decades since World War II. In the current political environment in the Pacific region, it is paramount that we maintain those ties and continue to develop our strategic framework for a peaceful future in the region. Our investment will help to ensure that Palau becomes financially independent over time and continues to stand with us as a loyal, trustworthy, and democratic ally.

In today's dynamic Pacific environment, others in the region closely watch how the United States treats its new and old friends. Changing out engagement with Palau could affect the way others view our commitment to the region. It is likely that Palau would face offers of assistance from other nations expanding their reach in the Pacific to fill the void we would leave.

I hope that my testimony today gives you an understanding and sense of how the Compact deepens our partnership with Palau and serves the interests of the United States. I look forward to working with you and other Members of Congress to secure and advance U.S. interests in Palau by passing the legislation implementing the results of the Compact review before the end of the year.

Thank you again for giving me the opportunity to testify before you today and to clarify the importance of this legislation. I look forward to answering your questions.

The CHAIRMAN. Very good. Thank you all for your cooperation here. Let me just kick off a few issues that seem important to Senator Murkowski and me.

Mr. Kagan, first, I don't think it's exactly an atomic secret that China wants to expand its sphere of influence in this part of the world. What would be the implications of failing to approve an agreement with respect to China?

Mr. KAGAN. The broader question is not just China, but it's about U.S. ability in the region.

The CHAIRMAN. Allies in the region.

Mr. KAGAN. I think that what the region sees is that we have a long standing relationship with Palau. One that's been beneficial to both countries and which gives us, as Deputy Assistant Secretary of Defense Singh has said, very valuable national security prerogatives in a critical part of the world.

I think that the broader question really is if the U.S. is unable to move forward on something that we have signed that this will call into question the credibility both of our own word, but more broadly of our engagement in the region and our commitment to the region.

So I think the question of China is obviously an important one. I think it's worth noting that China has expanded its engagement in the region. But that said, it's done so in many other parts of the world commensurate with its own rise.

I think that the broader question really is one of U.S. credibility and the fact that people are watching. This is a question that we are asked regularly about the Palau Compact by other Pacific States, some other states in the Asia Pacific. I think that we will not stand in good stead with our allies and partners if we're not seen fulfilling this.

The CHAIRMAN. Alright.

Ms. Sobeck, I think it's pretty obvious that in today's political realities, you need an offset for a piece of legislation like this.

I'd like to ask that you and your staff commit to working with my staff and with Senator Murkowski's staff so that 2 weeks from now we have found a politically viable offset. Will you commit to doing that?

Ms. SOBECK. I'm happy to commit myself and my staff to work with you. I hope that we can achieve the goal. But we will certainly engage. We really appreciated working with your staff on this issue.

So yes, we commit to work with you. Absolutely.

The CHAIRMAN. I don't want to make this a brutal forced, star chamber proceeding, but we really need you all to dig in with us. We've got to get this done.

I'm going to ask some other questions with respect to the offsets, but we need you all to really dig in with us.

I'll just interpret your answer as you're willing to take out the shovels and help us address this offset. I appreciate it.

Mr. Kagan, Palau and the other countries with which the United States has compacts of free association are all sovereign nations. We've got embassies. We've got Ambassadors. They've got their own seat at the United Nations.

Yet the funding for the compacts comes out of the Department of the Interior. As we've looked at this question with respect to both how to address our responsibilities and how to address the offsets, I've come to think that what I just described to you made certainly a lot of sense several decades ago. But I think it is worth discussing the idea of moving the Compact of Free Association responsibilities from the Interior to the State Department.

I want to emphasize that it seems to me this is an idea worth exploring just because these compacts are truly important to America's strategic interests. My concern is that with all the inertia that inevitably sets in with a challenging budget situation. These compacts are at risk.

The Congress, the Administration, haven't been able to agree on an offset. I think part of this is due to the fact that this is an Interior program. So people say the offset has to come from Interior. I think the reason I asked Ms. Sobeck the question is we're all going to have to be part of this effort to address this.

I think it's also worth noting that the reality is these agreements are with foreign nations. What we have traditionally said is agreements with foreign nations, logically, belong at the Department of State.

Has there been discussion, Mr. Kagan, at the State Department of the idea of moving this program from Interior to State?

Mr. KAGAN. Thank you, Mr. Chairman.

Obviously you raise a very valid and interesting point. I think the short answer is no. There has not been a discussion.

The CHAIRMAN. Are you sure?

Mr. KAGAN. At the Department of State.

The CHAIRMAN. You're sure there have been no discussions?

Mr. KAGAN. I think—

The CHAIRMAN. That's a yes or no answer.

Mr. KAGAN. To the best of my knowledge we have had no discussions because we believe that the current arrangements work. There is a long legislative history, a long history, of our relationships with the compact states that go back to the original creation of the compacts where it was believed it was very important to maintain a very special relationship between the compact states and the United States.

Because of this special relationship the compact states, typically Palau, are eligible to receive Federal assistance typically provided only to U.S. States and territories and not available to general recipients of U.S. foreign assistance.

For this reason the Department of the Interior which had the expertise and continues to have the expertise and the experience and the understanding of the development needs of these countries, was the logical place to have the responsibility for continuing to provide the assistance.

We believe that this has worked. I mean, I think, clearly in the case of Palau.

The CHAIRMAN. So, time is brief.

I just want to know whether you agree that the agreement with Palau is important enough to put this idea and, frankly, all other ideas on the table for discussion?

That's a yes or no answer, too.

Mr. KAGAN. I think that the agreement with Palau is very important. It's important to move as quickly as possible. Certainly—

The CHAIRMAN. That's not the question I'm asking.

The question I'm asking is it important enough to put all the options for funding this on the table?

Mr. KAGAN. I believe, again, Mr. Chairman, that this is a very complex issue. This involves jurisdiction of a number of different committees both in the Senate and the House. It involves two executive departments. Moving forward on this and having these sorts of discussions could be something that we could do going forward.

But at the same time, it is very important to recognize this is not an easy process. I mean we believe it's very important to move quickly on Palau.

The CHAIRMAN. Mr. Singh, given your testimony about Palau's importance to America's national security isn't it appropriate that at least some of the cost of the Palau compact be borne by the Defense Department?

Mr. SINGH. I think, as Mr. Kagan was just saying, I think we have, there are sort of, two issues here, Senator.

The first is can we quickly implement what we've agreed to? I think for all of us we believe that that is going to be most easily done by keeping the obligations where they have been, the responsibilities where they have been and managing it as—

The CHAIRMAN. So are you answering my question no or yes?

Mr. SINGH. At this time, no. I do not think it is appropriate for the Department of Defense to fund this requirement. Actually at this point—

The CHAIRMAN. Not even a part?

Mr. SINGH. At this point also given the significant pressure the Department is under and the difficulty we're having in the back and forth we're having with Congress right now simply to fund our FY13 operations. Right now it is simply something the Department couldn't take on.

I would echo what Mr. Kagan said. I think if we can get a way forward now that eventually in the future I would agree with you that this is, you know, anything should be discussed.

But for not I think it is important that we try to move forward with the tools we have in place.

The CHAIRMAN. Here's what we're going to do.

No. 1, I'm going to hold the record open because I at least want to give you, Mr. Singh, and you, Mr. Kagan, the opportunity to flesh out the answers that you gave to my questions. We'll be open to any and all ideas.

[The information referred to by response of Mr. Kagan follows:]

While I am not aware of any serious discussions that have taken place at the State Department or between agencies involving the possibility of moving full responsibility for oversight and administration of the Compacts and their funding pro-

visions to the Department of State, we consider moving forward on the Palau Compact Review Agreement to be an important foreign policy priority.

Our partnership with Palau is a strategic asset and maintaining that relationship is a foreign policy priority for the Department of State; however, the Department of the Interior has many years of expertise, staffing resources, and institutional knowledge in administering Compact assistance and understanding the development needs of Palau, unlike the Department of State. Our Compact relationship affords Palau the eligibility to receive types federal assistance, including access to federal programs and services, typically provided only to U.S. states and territories (Commonwealth of Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, and Commonwealth of Northern Marianas), that are generally not available to recipients of U.S. foreign assistance. Primary jurisdiction over Palau Compact assistance, and technical assistance to the other Compact states, has historically resided with the Department of the Interior. We will continue working with Interior, the rest of the Administration, and you on this important policy issue.

Moving forward, any discussion on where Compact oversight responsibilities should reside should involve numerous stakeholders including the Department of the Interior, the Department of Defense, the Department of State, the U.S. Agency for International Development, the Office of Management and Budget, the National Security Staff, as well as the numerous Congressional committees that have an interest in the U.S.-Palau Compact. Given that such complex discussions could require a substantial amount of time and consideration, we believe that moving now, without any further delay, on the Palau Agreement is important.

We hope this information is helpful. Please let us know if we can be of further assistance.

The CHAIRMAN. But what I had hoped, Mr. Singh, and frankly what I think is disappointing, is I think everybody's got to step up. I don't think it's acceptable to just say, look, we've always done it this way. So we're going to keep doing it this way.

I mean, that's not what I do on any other program. I mean, to have everybody just be on automatic pilot and say this is the way we've always done it, I think in these times we've got to be open to all the options.

Particularly to say, look, and this would be fine with me to say this is difficult. Defense Department, other agencies under sequestration, but we're going to roll up our sleeves and try to figure out how to solve some stuff that looks intractable. Particularly on these kinds of issues, nobody gets exactly what they want. Nobody gets what they actually believe they deserve.

The question is are we going to be able to get what we need?

I think, certainly the two of you and I've heard your agencies talk about it, don't doubt for an instance, that this is a strategic relationship and one that we'd feel strongly about.

So when you have a strategic relationship you start with that and say, look, there's some tough calls. We've got to find some ways to address it and particularly in difficult times.

I've said, for example, to my constituents just down the hall on something we feel very strongly about, the Klamath Basin in rural Oregon, where it's dry as a bone. They've worked very hard to come up with a restoration agreement. I said, I don't think we can afford that.

We're all going to have to go back to the table. That's what we're doing now on a bipartisan basis. We're going back to the table and looking for ways where I just heard you say this Mr. Singh. I don't want you to feel specifically singled out, where we are saying it's not enough to say this is the way it's been done in the past. We've got to say we're going to do some new stuff.

So expect that we'll be in touch as well with your respective Secretaries or your agencies. This has to get done. The 3 of you are dedicated public servants. I don't doubt that for a moment.

We're going to have to look at some fresh approaches.

Ms. Sobeck, you got put under the microscope first because we committed you to 2 weeks. I guess what I'm going to do is say that for Mr. Kagan and Mr. Singh.

I want you to have every opportunity to flesh out your statements for the record. I suspect you may want to do that. We need you to come back to us within 2 weeks as well with your ideas with respect to the points that I talked about.

Mr. Singh, a question of the Defense Department since this is a strategic asset sharing at least some portion of the cost. Then looking at how the State Department can have a bigger role in this certainly with respect to the idea I talked about, moving it to the Department.

But we'll stay open for other options.

Do any of you have anything else you want to add before we wrap up?

Alright.

With that the Energy Committee is adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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##### RESPONSE OF EILEEN SOBECK TO QUESTION FROM SENATOR WYDEN

*Question 1.* Assistant Secretary Sobeck, Delegate Christensen asks that the Committee also consider adding her legislation H.R. 374 to this Omnibus bill. H.R. 374 would establish a pilot program to leverage private pension funds to raise revenues for meeting the chronic infrastructure needs in the territory and it would raise funds for the U.S. Treasury. Because it is a revenue raiser, this bill would be in the jurisdiction of the Finance Committee and as a member of that Committee, I am interested in the Administration's views on this bill because it may also provide an offset for the legislation to approve the Compact Agreement with Palau.

Would you please provide the Administration's views, including Treasury Department views, on this bill to the Committee with 45 days?

Answer. Approving the results of the Compact Review Agreement is of critical importance to the national security of the United States, to our bilateral relationship with Palau, and to our broader strategic interests in the Asia Pacific region. The Department is interested in continuing to work with the Committee to identify an appropriate off-set to approve the Compact Agreement with Palau. As you noted, HR 374 amends the Internal Revenue Code to provide for a reduction of taxes on distributions from certain retirement savings plans designated by an individual under the age of 61 as being under investment by the Virgin Islands Investment Program for at least 30 years. This legislation amends the Internal Revenue Code to raise revenue, and therefore is within the purview of the U.S. Treasury. The Department is unable to comment on behalf of the U.S. Treasury, but has flagged your request for the U.S. Treasury's review.



## APPENDIX II

### Additional Material Submitted for the Record

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STATEMENT OF HON. HERSEY KYOTA, AMBASSADOR OF THE REPUBLIC OF PALAU TO  
THE UNITED STATES, ON S. 1268

The Republic of Palau appreciates the opportunity to provide this Statement to the Senate Energy and Natural Resources Committee in connection with Senate Bill 1268, to approve the Agreement between Palau and the United States entered into on September 3, 2010. On behalf of President Remengesau and the people of Palau, I would also like to convey our special appreciation and gratitude to Chairman Wyden, Ranking Member Murkowski and the members of this Committee for their continued support and assistance to the Government and people of Palau.

We particularly appreciate that Chairman Wyden so promptly introduced S. 1268 and included it in the July 11 hearing. Palau is also grateful for the efforts discussed at the hearing to expeditiously find the means to implement the Agreement.

As the witnesses at the hearing explained, the S. 1268 would implement the Agreement reached between Palau and the United States following the review mandated under Section 432 of the Compact of Free Association between Palau and the United States. In short, as noted at the hearing, the Agreement addresses the goal of economic self-reliance by extending assistance to Palau under the Compact on a declining scale of funding through 2024 and it provides for Palau to continue to make economic, legislative, financial, and management improvements.

The Agreement has been awaiting approval by the United States Congress for almost three years. In addition to creating regional strategic and security concerns, this delay is an obstacle to Palau's continued economic growth and progress toward self-reliance and negatively impacts the confidence of domestic and foreign investors. It also makes managing Palau's finances difficult and postpones critical public infrastructure investments and maintenance of existing economic infrastructure. Throughout this period, Palau has patiently worked as best it can to assist the United States government in implementing the Agreement.

Chairman Wyden indicated that Palau is unsinkable as a country. Palau's friendship with the United States has also remained unsinkable. Our two countries need the Agreement so that the strong relationship between Palau and the United States can continue to be an important and strategic base for stability and security in the Western Pacific. Palau will continue to support the efforts of the United States to promptly approve the Agreement.

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STATEMENT OF DAVID B. GOOTNICK, DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE,  
THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE

COMPACTS OF FREE ASSOCIATION.—GUIDELINES NEEDED TO SUPPORT RELIABLE  
ESTIMATES OF COST IMPACTS OF GROWING MIGRATION

#### *Why GAO Did This Study*

U.S. compacts with the FAS permit those three countries' citizens to migrate to the United States and its territories (U.S. areas) without regard to visa and labor certification requirements. Thousands of FAS citizens have migrated to U.S. areas (compact migrants)-particularly to Hawaii, Guam, and the CNMI. In fiscal year 2004, Congress appropriated \$30 million annually for 20 years to help defray affected jurisdictions' costs for migrant services. Interior allocates the \$30 million as compact impact grants in proportion to the number of compact migrants living in each affected jurisdiction. Although not required, affected jurisdictions may report impact costs to Interior, which submits any reports it receives to Congress. This statement draws from GAO's November 2011 report on compact migrants and discusses challenges in identifying the impact of compact migrants on U.S. areas. For

this statement, GAO assessed progress made by Interior to address the recommendation that it disseminate cost guidelines.

#### *What GAO Recommends*

GAO is not making new recommendations in this statement. In its 2011 report, GAO recommended that Interior disseminate adequate guidance for estimating compact cost impacts and call for the affected jurisdictions to apply these guidelines, among other steps needed to assess and address the impact of the growing compact migration. Interior concurred with the recommendation on providing adequate guidance for estimating compact cost impacts.

#### *What GAO Found*

Data from the U.S. Census Bureau (Census) show that migrants from the freely associated states (FAS)—the Federated States of Micronesia (FSM), the Marshall Islands, and Palau—reside throughout U.S. areas. GAO's 2011 report found that Census estimates that roughly 56,000 compact migrants—nearly a quarter of all FAS citizens—were living in U.S. areas in 2005 to 2009. About 58 percent of compact migrants lived in areas that Congress defined in the amended compacts' enabling legislation as affected jurisdictions: American Samoa, Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI).

For fiscal years 2004 through 2010, Hawaii, Guam, and the CNMI reported more than \$1 billion in costs associated with providing education, health, and social services to compact migrants—far in excess of the \$210 million in compact impact grants over that time period. The affected jurisdictions reported impact costs for education, health, public safety, and social services to the Department of the Interior (Interior). Education accounted for the largest share of reported expenses in all three jurisdictions, and health care costs accounted for the second-largest share overall.

However, assessed against best practices for cost estimation, these cost estimates contain a number of limitations with regard to accuracy, adequate documentation, and comprehensiveness, affecting the reported costs' credibility and preventing a precise calculation of total compact impact on the affected jurisdictions. For example, some jurisdictions did not accurately define compact migrants, account for federal funding that supplemented local expenditures, or include revenue received from compact migrants.

Interior developed guidelines in 1994 for reporting compact impact. However, several officials from the reporting local government agencies, as well as Interior officials, were not aware of the guidelines and had not used them. Moreover, the 1994 guidelines do not address certain concepts that are essential for reliable estimates of impact costs, such as calculating revenue received from providing services. Providing more rigorous guidelines to the affected jurisdictions that address concepts essential to producing reliable impact cost estimates and promoting their use for compact impact reports would increase the likelihood that Interior can provide reliable information on compact impacts to Congress. Although Interior took initial steps to implement GAO's recommendation in 2012, it has not yet provided updated guidelines for estimating compact cost impacts.

Sector	Guam	Hawaii	CNMI	Total
Educational services	\$201,083,392	\$291,063,024	\$25,426,059	\$517,569,475
Health services	\$65,374,486	\$237,889,693	\$10,700,277	\$313,963,456
Public safety services	\$55,561,693	\$7,641,537	\$17,852,038	\$81,055,268
Social services	\$4,532,431	\$52,159,026	\$1,527,730	\$58,219,187
<b>Total</b>	<b>\$326,549,292</b>	<b>\$628,752,280</b>	<b>\$55,516,104</b>	<b>\$1,010,817,676</b>

Sources: GAO analysis of affected jurisdictions' compact impact reports for 2004 through 2010.

Note: The reported costs are in nominal dollars, unadjusted for inflation.

Chairman Wyden, Ranking Member Murkowski, and Members of the Committee:

I am pleased to submit this statement about our previous work on the impact of migration under provisions of the compacts of free association.<sup>1</sup> Three Pacific island nations—the Federated States of Micronesia (FSM), the Republic of the Marshall Islands, and the Republic of Palau—have entered into compacts with the United States. Compact goals included achieving self government, promoting economic ad-

<sup>1</sup> GAO, *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration*, GAO-12-64 (Washington, D.C.: Nov. 14, 2011). We also previously reported on compact migrants and their impact in *Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands*, GAO-02-40 (Washington, D.C.: Oct. 5, 2001).

vancement, and securing security and defense rights. In addition, the compacts provide for citizens of these freely associated states (FAS) to enter and reside indefinitely in the United States, including its territories. Since the compacts went into effect—in 1986 for the FSM and the Marshall Islands and in 1994 for Palau—thousands of migrants from these countries have established residence in U.S. areas, particularly in Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands (CNMI).<sup>2</sup>

In 2003, Congress approved amended compacts with the FSM and the Marshall Islands.<sup>3</sup> In the amended compacts’ enabling legislation, Congress extended additional economic assistance to the two countries and authorized and appropriated \$30 million annually for 20 years for grants to Guam, Hawaii, the CNMI, and American Samoa, which it deemed “affected jurisdictions,” to help defray the cost of services to compact migrants.<sup>4</sup> Congress directed the Department of the Interior (Interior) to divide these compact impact grants among the affected jurisdictions in proportion to the most recent enumeration of compact migrants residing in each jurisdiction. Since 1986, affected jurisdictions have submitted to Interior compact impact reports that include descriptions of, and estimated costs for, education, health, public safety, and social services that local government agencies provided to compact migrants. However, affected jurisdictions have expressed continuing concerns that they do not receive adequate compensation for the growing cost of providing government services to compact migrants. In addition, thousands of compact migrants have moved to other states that are not eligible to receive compact impact grants. My statement draws from our November 2011 report on compact migrants and will discuss challenges in assessing the impact of compact migrants on U.S. areas.<sup>5</sup>

For our 2011 report’s discussion of the impact of compact migrants, we reviewed previous reports on compact migration and cost estimation, Interior’s impact reports, as well as the supporting documentation and methodologies used to prepare impact reports. We also interviewed Interior and local government officials. To assess compact impact cost reporting, we reviewed affected jurisdictions’ impact reports since 2004 and compared these reports to cost estimation criteria.<sup>6</sup> To assess Interior’s guidance on compact impact reporting, we reviewed the requirements in the amended compacts’ enabling legislation and Interior’s existing guidelines. To describe compact migrants’ role in the economy, we used data from earlier FAS migrant surveys, supplemented where possible with additional information from local agencies and other literature. For this statement, in June 2013, we updated and assessed progress made by Interior on the recommendation in the 2011 report that Interior disseminate adequate guidance on estimating compact cost impacts. Our 2011 report contains a detailed description of its scope and methodology.

We conducted this work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### *Background*

The FSM, the Marshall Islands, and Palau are among the smallest countries in the world. In 2008, the three FAS had a combined resident population of approximately 179,000—104,000 in the FSM, 54,000 in the Marshall Islands, and 21,000 in Palau.

Under the compacts of free association, citizens of the FAS are exempt from meeting the visa and labor certification requirements of the Immigration and Nationality Act as amended. The migration provisions of the compacts allow compact migrants to enter the United States (including all U.S. states, territories, and possessions)

<sup>2</sup> In this report, “U.S. areas” refers to the 50 U.S. states; the U.S. insular areas (Guam, the CNMI, American Samoa, and the U.S. Virgin Islands); Puerto Rico; and the District of Columbia.

<sup>3</sup> Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188, December 17, 2003. In this testimony, the act is referred to as “the amended compacts’ enabling legislation.”

<sup>4</sup> Because of American Samoa’s small reported FAS population—estimated at 15 in a 2008 enumeration—we did not address compact migrants in American Samoa in our 2011 report.

<sup>5</sup> GAO-12-64.

<sup>6</sup> GAO, GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs, GAO-09-3SP (Washington, D.C.: March 2009) and OMB Circular No. A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, revised October 29, 1992.

and to lawfully work and establish residence indefinitely.<sup>7</sup> In the 1986 compacts' enabling legislation, Congress stated that it was not its intent to cause any adverse consequences for U.S. territories and commonwealths and the state of Hawaii. Congress further declared that it would act sympathetically and expeditiously to redress any adverse consequences and authorized compensation for these areas that might experience increased demands on their educational and social services by compact migrants from the Marshall Islands and the FSM.

The December 2003 amended compacts' enabling legislation restated Congress's intent not to cause any adverse consequences for the areas defined as affected jurisdictions—Guam, Hawaii, the CNMI, and American Samoa. The act also authorized and appropriated \$30 million for each fiscal year from 2004 to 2023 for grants to the affected jurisdictions, to aid in defraying costs incurred by these jurisdictions as a result of increased demand for health, educational, social, or public safety services, or for infrastructure related to such services specifically affected by compact migrants resident in the affected jurisdictions.<sup>8</sup>

Figure 1\* shows the locations of the FAS and the affected jurisdictions.

The amended compacts' enabling legislation provides for Interior to allocate the \$30 million in grants to affected jurisdictions on the basis of their compact migrant population. Each affected jurisdiction is to receive its portion of the \$30 million per year in proportion to the number of compact migrants living there, as determined by an enumeration to be undertaken by Interior and supervised by the U.S. Census Bureau (Census) or another organization at least every 5 years.<sup>9</sup> The act defines the population to be enumerated as persons, or those persons' children under the age of 18, who pursuant to the compacts are admitted to, or resident in, an affected jurisdiction. The amended compacts' enabling legislation permits, but does not require, affected jurisdictions to report on compact migrant impact. If Interior receives such reports from the affected jurisdictions, it must submit reports to Congress that include, among other things, the governor's comments and administration's analysis of any such impacts.

The combined data from Census's 2005-2009 American Community Survey and the 2008 required enumerations in Guam and the CNMI estimated that approximately 56,000 compact migrants<sup>10</sup>—nearly a quarter of all FAS citizens—lived in U.S. areas, with the largest populations in Guam and Hawaii. An estimated 57.6 percent of all compact migrants lived in affected jurisdictions: 32.5 percent in Guam, 21.4 percent in Hawaii, and 3.7 percent in the CNMI, while nine mainland states each had an estimated compact migrant population of more than 1,000. (See fig. 2.)

On the basis of these combined data, we estimate that approximately 68 percent of compact migrants were from the FSM, 23 percent were from the Marshall Islands, and 9 percent were from Palau. Surveys conducted in affected jurisdictions from 1993 through 2008 show growth in the compact migrant populations in Guam and Hawaii. In the CNMI, from 2003 to 2008, the compact migrant population declined. Over the same period, the total compact migrant population in Guam and Hawaii grew as a percentage of their total populations. The estimated number of compact migrants in Guam increased from 9,831 in 2003 to 18,305 in 2008. In 2003, compact migrants represented approximately 6 percent of Guam's total population, but by 2008 they had increased to approximately 12 percent. Compact migrants in

<sup>7</sup> Under the compacts, the United States has a responsibility for the defense of the FAS, and the compacts provide the United States with exclusive military use rights in these countries. In addition, under the compacts, the United States provided economic assistance and access to certain federal services and programs, among other things. Under the initial compacts with the FSM and the Marshall Islands, the United States provided \$2.1 billion in economic assistance to these governments. Under the amended compacts, the United States will provide an estimated combined total of \$3.6 billion in economic assistance, much of it in a form known as "sector grants," in annually decreasing amounts from 2004 through 2023. For more information about U.S. assistance provided under the amended compacts, see *Compacts of Free Association: Micronesia's and the Marshall Islands' Use of Sector Grants*, GAO-07-514R (Washington, D.C.: May 25, 2007). We plan to publish an additional report on the use of these funds in September 2013.

<sup>8</sup> Beginning in fiscal year 2010, Interior was to annually award approximately \$16.8 million to Guam, \$11.2 million to Hawaii, and \$1.9 million to the CNMI.

\* Figures 1–3 have been retained in committee files.

<sup>9</sup> Census conducted these enumerations in 2003 and 2008 and plans to conduct a third in 2013. Previous Interior and Census surveys had enumerated the migrant population in 1992-1993 and 1997-1998.

<sup>10</sup> Census's 2005-2009 American Community Survey and 2008 enumerations estimated the total number of compact migrants in U.S. states and territories as ranging from 49,642 to 63,048, with a 90 percent confidence interval; that is, Census is 90 percent confident that the true number of compact migrants falls within that range. For additional detail on these Census estimates, see pages 12 through 18 of GAO-12-64.

Hawaii increased during the same period from an estimated 7,297 to 12,215 and represented approximately 1 percent of Hawaii's total population in 2008.

An analysis of 2010 decennial census race data also shows growth in the population of FAS-related persons throughout the United States, with the U.S. population of FAS-related persons more than tripling from 17,380 in 2000 to 55,286 in 2010.<sup>11</sup>

*Guam and Hawaii Report Rising Compact Costs, Primarily for Education and Health*

For 2004 through 2010, the affected jurisdictions' reports to Interior show more than \$1 billion in costs for services related to compact migrants.<sup>12</sup> During this period, Guam's annual reported costs increased by nearly 111 percent, and Hawaii's by approximately 108 percent. The CNMI's reported annual costs decreased by approximately 53 percent, reflecting the decline in the CNMI compact migrant population. During the same period, the amended compacts' enabling legislation provided \$210 million in impact grants—approximately \$102 million to Guam, \$75 million to Hawaii, and \$33 million to the CNMI.<sup>13</sup> Figure 3 shows compact impact costs reported by the affected jurisdictions for 1996 through 2010.<sup>14</sup>

The affected jurisdictions reported impact costs for education, health, public safety, and social services. Education accounted for the largest share of reported expenses in all three jurisdictions, and health care costs accounted for the second-largest share overall (see table 1). Several officials in Guam and Hawaii cited compact migrants' limited eligibility for a number of federal programs, particularly Medicaid, as a key contributor to the cost of compact migration borne by the affected jurisdictions.<sup>15</sup> While their parents may not be eligible for some programs, U.S.-born children of compact migrants are eligible as citizens for the benefits available to them as U.S. citizens.<sup>16</sup>

<sup>11</sup>We use "FAS-related persons" to refer to individuals reporting that they are of one of the FAS races and only that race (e.g., Pohnpeian, Chuukese, Marshallese, Palauan) in the 2010 decennial census. There are substantial differences between the decennial census counts based on reported race and the Census estimates of compact migrants derived from the 2005-2009 American Community Survey and 2008 migrant enumerations. For example, the 2010 decennial census counted 21,226 persons reporting they were solely of an FAS race in Hawaii, while the 2005-2009 American Community Survey estimated 12,060 compact migrants in the state. On the U.S. mainland, the 2010 decennial census counted 4,302 persons reporting they were solely of an FAS race in Arkansas, while the American Community Survey estimated 1,155 compact migrants in the state. There are multiple definitional and methodological reasons why these numbers are not comparable. For a full discussion of these issues, see appendix IV of GAO-12-64.

<sup>12</sup>For 1986 through 2003, affected jurisdictions reported total compact impact costs of approximately \$540 million to \$568 million (unadjusted for inflation).

<sup>13</sup>In addition, from 1992 through 2003, Guam received approximately \$53 million, Hawaii received \$7 million, and the CNMI received \$6.6 million from funds appropriated to Interior for grants to address compact impact. The largest annual compact impact grants to Guam in fiscal years 2005 through 2010 supported public school construction and maintenance. Most other compact impact grants to Guam funded health and public safety purchases, such as the purchase or renovation of facilities, emergency vehicles, and medical supplies, among many others. All compact impact grants to Hawaii in fiscal years 2004 through 2010 were provided to its Department of Human Services to offset the cost of state-funded medical services. Compact impact grants to the CNMI in fiscal years 2004 through 2010 supported the operations of several CNMI government departments, such as the Departments of Public Health and Public Safety, and the public school system.

<sup>14</sup>Guam published its most recent estimate of the impact of compact migration in January 2013. In its January report, Guam estimated that its fiscal year 2011 impact was \$95.3 million and its fiscal year 2012 impact was \$125 million. CNMI estimated a 2011 impact of approximately \$2.5 million and a 2012 impact of approximately \$5.6 million in its 2012 compact impact grant application. We have not assessed the reliability of these more recent estimates. Hawaii has not compiled updated compact impact estimates since its 2011 report.

<sup>15</sup>When the compacts were signed, FAS citizens were eligible for Medicaid; however, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) removed this eligibility. Hawaii chose to continue to provide equivalent services at its own expense. Current legislation in both the House (H.R. 912 and H.R. 1222) and Senate (S. 744) would restore Medicaid eligibility for compact migrants. Guam and the CNMI, unlike states, are subject to annual caps on federal funds for Medicaid; once this cap is reached, each area must provide for the cost from its own funds. For further information, see GAO, U.S. Insular Areas: Multiple Factors Affect Federal Health Care Funding, GAO-06-75 (Washington, D.C.: Oct. 14, 2005).

<sup>16</sup>See table 2 on page 27 of GAO-12-64 for an analysis of the eligibility status of compact migrants as of November 2011 for ten selected federal benefit programs, including Social Security programs, Medicare, the Children's Health Insurance Program, Temporary Assistance to Needy Families, and the Supplemental Nutrition Assistance Program.

**Table 1: Affected Jurisdictions' Reported Compact Impact, by Sector, 2004-2010**

Sector	Guam	Hawaii	CNMI	Total
Educational services	\$201,080,392	\$281,063,024	\$25,428,059	\$517,569,475
Health services	\$85,374,486	\$237,886,693	\$10,700,277	\$313,963,456
Public safety services	\$55,581,983	\$7,641,537	\$17,862,038	\$81,065,558
Social services	\$4,532,431	\$92,159,026	\$1,527,730	\$98,219,167
<b>Total</b>	<b>\$326,549,292</b>	<b>\$628,752,280</b>	<b>\$55,516,104</b>	<b>\$1,010,817,676</b>

Source: GAO analysis of affected jurisdictions' compact impact reports for 2004 through 2010.

Note: The reported costs are in nominal dollars, unadjusted for inflation.

### *Compact Impact Estimates Have a Number of Weaknesses*

We identified a number of weaknesses related to accuracy, adequacy of documentation, and comprehensiveness in affected jurisdictions' reporting of compact impacts to Interior from 2004 through 2010.<sup>17</sup> Examples of such weaknesses include the following.

#### *Accuracy*

- **Definition of compact migrants.**—For several impact reports that we examined, the reporting local government agencies, when calculating service costs, did not define compact migrants according to the criteria in the amended compacts enabling legislation. For instance, some agencies defined and counted compact migrants using the proxy measures of ethnicity, language, or citizenship rather than the definition in the amended compacts' enabling legislation. Using ethnicity or language as a proxy measure could lead to overstating costs, since neither measure would exclude individuals who came to the jurisdiction prior to the compact, while using citizenship as a proxy measure could lead to understating costs, since it would exclude U.S.-born children of compact migrants.
- **Federal funding.**—Guam, Hawaii, and the CNMI, among other U.S. states and territories, receive federal funding for programs that compact migrants use; however, not all compact impact reports accounted for this stream of funding and included costs in compact impact estimates for programs that federal funding had partially addressed. To the extent that federal revenue for programs in affected jurisdictions is based on population counts or data on usage, the presence of, and use of services by, compact migrants lead to federal offsets. For example, from 2004 to 2008, Hawaii developed its education impact costs by calculating a per-pupil expenditure multiplied by the number of compact migrant students enrolled each school year. However, federal funds received through several programs are included in these annual expenditures. If the federal funds component of per-pupil expenditures were subtracted from Hawaii's education impact reporting, as well as a correction made to eliminate a data error that double-counted Marshallese students, it would reduce the total cost of services to compact migrants by approximately \$61 million for 2004 through 2008 from \$229 to \$168 million.<sup>18</sup>
- **Revenue.**—Multiple local government agencies that receive fees as a result of providing services to compact migrants did not consider fees in their compact impact reports. Any exclusion of revenue may cause an overstatement of the total impact reported. Compact migrants also participate in local economies through their participation in the labor force, payment of taxes, consumption of local goods and services, and receipt of remittances. Previous compact migrant surveys estimated compact migrants' participation in the labor force, but existing data on other compact migrant contributions such as tax revenues, local consumption, or remittances are not available or sufficiently reliable to quantify their effects.
- **Capital costs.**—Many local government agencies did not include capital costs in their impact reporting. Capital costs entail, for example, providing additional classrooms to accommodate an increase in students or constructing additional health care facilities. In cases where compact migration has resulted in the ex-

<sup>17</sup> For a discussion of recommended cost estimation practices, see GAO-09-3SP. For federal cost estimation guidelines, see OMB Circular No. A-94.

<sup>18</sup> The Hawaii Department of Education excluded federal funds from its costs reported to Interior in August 2011.

pansion of facilities, agencies understated compact migrant impact by omitting these costs.<sup>19</sup>

- Per person costs.—A number of local government agencies used an average per-person service cost for the jurisdiction rather than specific costs associated with providing services to compact migrants. For example, one jurisdiction based the cost of providing health care services to compact migrants on the number of migrants served out of the total patient load instead of totaling each patient's specific costs. Using the average cost may either overstate or understate the true cost of service provision.<sup>20</sup>

#### *Documentation Adequacy*

A number of local government agencies did not disclose their methodology for developing impact costs, including any assumptions, definitions, and other key elements, which makes it difficult to evaluate reported costs. Furthermore, some agency methodologies vary among affected jurisdictions.

#### *Comprehensiveness*

For those years when the affected jurisdictions submitted impact reports to Interior, not all local government agencies in the affected jurisdictions included compact impact costs for those years. For example, Hawaii did not provide estimated costs to Interior in 2005 and 2006, although it included partial costs incurred in those years in its 2007 and 2008 reports. Without comprehensive data in each year, the compact impact reports could understate total costs. In addition, compact impact reporting has not been consistent across affected jurisdictions. For example, Guam and the CNMI included the cost of providing police services, while Hawaii did not.

#### *Existing Compact Impact Reporting Guidelines Have Gaps and Generally Are Not Used*

Guidelines that Interior developed in 1994 for compact impact reporting do not adequately address certain concepts key to reliable estimates of impact costs. Developed in response to a 1993 recommendation by the Interior Inspector General,<sup>21</sup> the guidelines suggest that impact costs in Guam and the CNMI should, among other concepts, (1) exclude FAS citizens who were present prior to the compacts, (2) specify omitted federal program costs, and (3) be developed using appropriate methodologies. However, the 1994 guidelines do not address certain concepts, such as calculating revenue received from providing services to compact migrants, including capital costs, and ensuring that data are reliable and reporting is consistent.

Several Hawaii and CNMI officials from the reporting local government agencies we met with, as well as Interior officials, were not aware of the 1994 guidelines and had not used them. Officials at the Guam Bureau of Statistics and Plans, which possessed the guidelines, said that the bureau attempts to adhere to them when preparing compact impact cost estimates. However, we found some cases where the bureau and other Guam agencies did not follow the guidelines.

In order to strengthen Interior's ability to collect, evaluate, and submit reliable information to Congress on compact impact, we recommended in our November 2011 report that Interior disseminate guidelines to the affected jurisdictions on producing reliable impact estimates, and call for the affected jurisdictions to apply these guidelines when developing compact impact reports. Interior agreed with our recommendation. In March 2012, Interior convened a meeting of the Presidents of the FAS and governors and senior officials from affected jurisdictions to collaboratively develop strategies to address policy issues concerning the compacts. At the meeting, Interior stated that it would work directly with the affected jurisdictions regarding the feasibility of developing uniform reporting guidelines, with Guam and Hawaii having leadership roles in the effort. As of June 2013, Interior had not prepared any new guidance. We continue to believe that providing more rigorous guidelines to the affected jurisdictions and promoting their use for compact impact reports would in-

<sup>19</sup>In schools, the number of additional compact migrant students will likely have led to increased capital costs such as additional school space. According to school district data for the 2010-11 school year, in affected jurisdictions, migrants made up 21 percent of the student population in Guam, 12 percent in the CNMI, and 3 percent in Hawaii.

<sup>20</sup>A further refinement is to consider the incremental cost of providing service to a compact migrant. If an agency has unused service capacity, the cost of serving an additional person would be less than the agency's average service cost. However, if an agency is operating at capacity, serving compact migrants might require an expansion in agency operations, causing the cost of serving compact migrants to exceed the average service cost. For a discussion of these cost issues, see GAO, *Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs*, GAO-04-733 (Washington, D.C.: June 21, 2004).

<sup>21</sup>U.S. Department of the Interior Office of Inspector General, *Audit Report: Impact of the Compact of Free Association on the Government of Guam*, Report No. 93-I-1195 (1993).

crease the likelihood that Interior can provide reliable information on compact impacts to Congress.

This concludes my statement for the record.

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LEGISLATURE OF THE VIRGIN ISLANDS,  
ENERGY AND ENVIRONMENTAL PROTECTION COMMITTEE,  
*St. Thomas, VI, July 9, 2013.*

Hon. RON WYDEN,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, 221 Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN WYDEN: The Honorable Donna M. Christensen, U.S. Virgin Islands Delegate to Congress, informed Virgin Islanders of your introduction of an Omnibus Territories Bill. I write in support of this legislation, particularly your initiative to address the energy needs of insular areas including the U.S. Virgin Islands. In my capacity as Chairman of the 30th Legislature of the Virgin Islands Committee on Energy and Environmental Protection ("Committee"), I most respectfully submit this letter of support to be referenced during the July 11, 2013 hearing on Senate Bill 1237 (S. 1237).

I am aware that S. 1237 is the companion Bill to H.R. 2200, introduced in May by Delegate Gregorio Sablan of the Northern Mariana Islands and co-sponsored by Delegate Christensen and other territorial delegates. The Virgin Islands is in critical need of the energy action plan the legislation requires of the Energy Development in Island Nations (EDIN) Task Force, established by the Secretary of the Interior. Presently, we are totally reliant on fossil fuel which we burn at a rate of over 12,000 BTUs per kilowatt-hour. With modern equipment, this could be reduced well below 9,000 BTUs per kilowatt-hour.

Some action has been taken locally. Act No. 7075, codified as Title 12, Virgin Islands Code, Chapter 23, was enacted to establish a benchmark for reliance on renewable energy technologies by Year 2025. Working with the Virgin Islands Water and Power Authority and the Virgin Islands Energy Office, my Committee has held hearings to discuss energy infrastructure and costs, as well as to explore energy generation options.

On behalf of the Committee, we realize federal resources are needed to help us develop and implement a plan to reduce the Territory's reliance and expenditures on fossil fuel. We stand ready to work with the Department of Interior to reduce energy costs and improve energy efficiency for the benefit of residents and businesses in the Virgin Islands. We are supportive of S. 1237 proposed expansion of funding for the Low Income Home Energy Assistance Program (LIHEAP).

I look forward to the success of this measure.

Respectfully,

SENATOR CRAIG W. BARSHINGER,  
*Chairman.*

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LEAGUE OF WOMEN VOTERS,  
*St. Thomas, VI, July 10, 2013.*

Hon. DONNA M. CHRISTENSEN,  
*Delegate, U.S. Virgin Islands, U.S. House of Representatives, Washington, DC.*

DEAR DELEGATE CHRISTENSEN: The League of Women Voters of the Virgin Islands lends its support to the Omnibus Territorial Bill, S. 1237, particularly to those portions of the Bill that relate to the Virgin Islands. This bill, introduced by Sen. Ron Wyden, D-OR, Chair of the Committee on Energy and Natural Resources, will be of significant assistance to the U.S. Territories as they grapple with global fiscal issues that have larger than usual impact on insular economies when compared with impact at the national level. For this reason, LWV-VI is in favor of the passage of this bill, especially those provisions that relate to the U.S. Virgin Islands.

We thank you for your contributions to the development and passage of this important piece of legislation for the U.S. Territories.

Sincerely,

GWEN-MARIE MOOLENAAR, PH.D., LLD,  
*President, LWV-VI.*

LEGISLATURE OF THE VIRGIN ISLANDS,  
CAPITOL BUILDING,  
*St. Thomas, VI, July 11, 2013.*

Salutatory greetings to the Honorable Chairman Ron Wyden, members of the Senate Committee on Energy and Natural Resources, and other persons in physical or virtual attendance. My name is Clarence Payne, and I am an elected member of the 30th Legislature of the Virgin Islands. I am the body's Liaison to the U.S. Congress and the Vice-Chairman of the Committee on Energy and Environmental Protection. However, I wish to make clear from the outset that I am not speaking on behalf of the 30th Legislature, and that the positions presented here are my own.

Due to the financial constraints facing the territory I have chosen not to provide testimony in person. However, I am thankful for this opportunity to submit written remarks on S. 1237, the Omnibus Territories Act, inasmuch as the provisions of this legislation address issues of critical importance to the Virgin Islands. Although the various sections of the bill deal with a wide array of topics that directly address the territory, I will focus, for the most part, on the critical issues of energy assistance for low-income households and the creation of a Chief Fiscal Officer in the Government of the Virgin Islands.

I must begin by stating from the outset that I cannot, and in this instance I believe I represent the viewpoint of most if not all of my colleagues of the 30th Legislature, be more supportive of the Omnibus Territories Act in terms of increasing the allocation of funds and adjusting the eligibility requirements for the operation of LIHEAP in the Virgin Islands. As an elected official who stays close to the pulse of the grassroots, I can assure you that it is of critical importance to the survival and well-being of thousands of households in the territory. As such, I not only applaud the sponsors of this measure, but on behalf of all residents of the Virgin Islands I urge you to go further in addressing the territory's energy crisis by introducing and passing a Senate version of H.R. 92, The Virgin Islands Energy Crisis Relief Act, proposed by our Delegate to Congress, the Honorable Donna Christensen. This measure would appropriate resources to help lower the consumer cost of electricity over the next two years and thus help ensure that the Virgin Islands economy survives until the ongoing improvements to our energy infrastructure are in place. Recently, the 30th Legislature of the Virgin Islands passed, by unanimous vote, Resolution No. 1794, urging the U.S. Congress to enact this important legislation introduced by our Delegate. A copy has been enclosed along with this presentation.

Although the amounts involved are less than a drop in the bucket compared to the overall federal budget, the increase in Low Income Home Energy Assistance Program (LIHEAP) funding and the adjustment in program eligibility for Virgin Islands residents are literally matters of survival for many Virgin Islanders and for the economy of the territory. It is by now no secret, as many officials from the Virgin Islands have previously testified before Congress on energy issues, that electricity prices in the Virgin Islands, at over 50¢ per kilowatt hour, are the highest of any jurisdiction under the American flag and are nearly 5 times higher than the stateside average of 11¢/kwh. As a result, the average monthly electricity bill Virgin Islands households is \$254—an amount unimaginable in any other U.S. jurisdiction.

Further, as Representative Sanford Price noted in his questioning of USDA officials at an April 24th hearing of the House Committee on Appropriations-Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies; the high price of electricity is particularly hard on the residents of the Virgin Islands inasmuch as we are an economically distressed territory. The per capita income in the Virgin Islands is roughly half of the mainland average and two-thirds that of the nation's least wealthy state, and the unemployment rate in the territory is 13.2% compared to the national rate of 7.6%. At the same time, however, the cost of living in the territory has been estimated to be as much as 150% of the national average. What this means in human terms is that for many households, and particularly for our elderly residents on fixed incomes, each month presents a harrowing choice between paying for electricity and buying medicine, food or other necessities. For a growing number of households, that choice has already been made for them, and we are seeing more and more households that have been living without electricity for weeks and months.

Businesses hardly fare better in the struggle to cope with electricity prices in the territory. One restaurant on the island of St. Croix regularly posts its monthly electric bill in the foyer so that its clients can realize the link between the increase in prices on the menu and the establishment's \$24,000 monthly electric bill. The only remaining dairy operation in the territory closed its doors a few months ago, citing its inability to keep up with a monthly electric bill that sometimes equaled a third

of its monthly revenues. A similar fate has overtaken the only remaining bookstore on St. Thomas, which is closing its doors next month.

These businesses are just a few among hundreds of establishments-faced with the inability to pass on their increased costs to consumers who have ever-decreasing amounts of disposable income-that have closed over the past few years. As the V.I. Public Services Commission has recently noted, the unsupportable price of electricity is draining the territory's economy of at least \$150-200 million dollars which would otherwise circulate in the economy-thus depriving the territory of much needed employment, internal investment, and economic opportunities.

Policymakers in the Virgin Islands have long been aware that the crux of our problem in this regard stems from the territory's total dependence on petroleum fuels for electricity production. The last ten years, during which the price of petroleum has risen from \$32 per barrel in October 2003 to the current price of over \$103 and rising, have been catastrophic for residents and businesses in the territory. We are taking concrete steps to diversify our energy infrastructure, and over the next 24 months the territory is on course to replace diesel with much less costly liquefied propane gas as the feedstock for electrical generation, and to begin utilization of solar power for 17% of the territory's electrical needs. The Water and Power Authority has estimated that these developments, apart from various measures to increase efficiency and energy conservation, will result in electricity bills that are 30-40% lower than at present. Besides the obvious fact that the resultant electricity prices will still be roughly three times the national average, a burning question still remains. How are our seniors and other residents of limited means to survive between now and then?

The Government of the Virgin Islands has taken its own measures and utilized its own resources to augment the funds provided under the LIHEAP program. Thus, in each of the last four fiscal years, the Legislature of the Virgin Islands has appropriated in excess of \$1 million to fund an Energy Crisis Assistance Program for elderly citizens and, to a lesser extent, low-income households. In the current fiscal year, for example, \$1.5 million of local funds have been appropriated to augment the \$147,389 provided to the territory under the LIHEAP program. However, even in combination with federal LIHEAP funds, the resources have not sufficed to meet the need. As such, the Department of Human Services, which administers the local program, has had to limit its service population to exclusively the elderly and persons with disabilities, leaving other low-income families unaddressed, and it has had to reduce the maximum bi-monthly benefit by 43% in order to serve the increased caseload and still ensure that the appropriated funds last through the fiscal year.

Both the federal government and the Virgin Islands government share the same goals regarding the medium and long term blueprint for energy security in the Virgin Islands, and we are making positive steps—including reducing our reliance on fossil fuels and enhancing energy efficiency and conservation—which are admirably augmented and facilitated by provisions such as the LIHEAP adjustment and the Energy Action Plan contained in this Omnibus Territories Act. We must, however, ask you to go further. It is critical, for our territory's immediate survival, that you provide us with the assistance that our people need in the short term while the necessary changes are being put in place. It will not suffice to say, a few years hence, that the operation was successful but that the patient died.

I also wish to say a few brief words on Section 7 of this bill, which would allow the people of the Virgin Islands to vote on the creation of a Chief Financial Officer position in the Virgin Islands. This bill, in various forms, has circulated through the halls of this august body for a number of years now. In the past, officials of the territorial government, including members of the Legislature of the Virgin Islands, have testified before Congress in vociferous opposition to legislation to establish a Chief Financial Officer. I believe, however, that this present version of the legislation follows a suitable approach. It seeks to accomplish the basic goal of the sponsor, which is to increase accountability and to create some degree of insulation between financial decision-making and the vagaries of the political process, while respecting the inherent right of the people of the Virgin Islands to self-determination. Unlike some previous versions of this measure, this bill calls for an expression of the people's will through a referendum, and it also provides that the CFO will be selected and appointed by local persons, rather than by the Department of the Interior or some other arm of the federal government. As such, I enthusiastically support the enactment of this Section.

A few words are also in order regarding the increased waiver of local matching fund requirements for federal grants to the territories. The increase from \$200,000 to \$500,000, reflecting real dollar figures that are equivalent to the value of the waiver when originally enacted in the early 1980's is of tremendous importance. Of even greater importance, however, is the extension of the waiver to all federal de-

partments and agencies. This will free up scarce local government resources and allow us to address pressing matters impacting the people of the Virgin Islands, and again in this instance I presume to believe I can speak for practically all residents of the Virgin Islands in expressing unhesitating support of this measure.

Lastly, I wish to applaud the sponsors of this bill for the inclusion of sections to create the Castle Nugent National Historic Site Establishment and to establish the St. Croix National Heritage Area. The promotion, protection and preservation of Virgin Islands heritage and culture are not simply important as economic resources that contribute to the viability of the tourism industry on which we depend, but they are in fact vital to our very identity as a people. Delegate Christensen has fought hard to bring the process to this point, beginning in 2006 with her sponsorship of legislation to fund the feasibility study that found St. Croix to be a suitable site. I applaud her foresight and tenacity, and offer my full and enthusiastic support of these measures. I only hope that in the near future, similar studies may be conducted with the goal of establishing national heritage areas in my district of St. Thomas-St. John, as our historical and cultural resources are, in my humble and admittedly biased opinion, no less worthy of recognition and protection.

I would like to thank Chairman Wyden and the members of this committee for your time and consideration, and I am confident that you will act with the best interests of the people of the Virgin Islands as a primary consideration. I, and others in the Virgin Islands, look forward to the forging of a new partnership with Congress and the administration in which the territory moves forward to true self-sufficiency and sustainable economic, social and political development that provides a high quality of life for all Virgin Islands residents.

Sincerely,

CLARENCE PAYNE, III,  
*Liaison to Congress.*

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#### STATEMENT OF FRANK POGUE, VICE PRESIDENT, STARKIST CO., ON S. 1237

On behalf of StarKist Co., I want to thank Chairman Wyden, Ranking Member Murkowski, and the Members of the Committee for holding this hearing to discuss S. 1237 The Omnibus Territories Act of 2013. I also want to thank Representative Eni Faleomavaega for his dedication to American Samoa and his leadership in this important effort to bring economic stability to American Samoa.

As you know, American Samoa has suffered a number of serious economic setbacks over the last five years. It is not hyperbole to say that when Chicken of the Sea closed its factory doors and took 2,000 jobs away on September 30, 2009, leaving StarKist as the only remaining large employer in American Samoa, it was the economic equivalent of the earthquake that gave rise to a tsunami.

American Samoa faces a tremendous threat to what remains of its tuna industry—the island’s economic engine—due to massive competition from low-wage countries and diminished incentives for fishing vessels to deliver to American Samoa. It is my hope that your efforts in today’s legislation are a beginning to a serious process of identifying changes to federal economic development policies necessary to promote diversification of the economy and growth within its current strengths.

#### ABOUT STARKIST

StarKist is a leading manufacturer, distributor, and marketer of shelf-stable seafood products in the United States, best known for our tuna products and our beloved icon Charlie the Tuna. We are a U.S. corporation headquartered in Pittsburgh, Pennsylvania, we have more than 1,800 employees in the United States, and we pay U.S. taxes. StarKist is also a subsidiary of the Dongwon Group, a leader in the food, beverage and fisheries industries in South Korea. Our plant in Pago Pago, American Samoa is our largest processing facility.

Our biggest challenge to manufacturing in American Samoa is a supply chain profile that is no longer competitive on a global basis. Consequently, we continue to lose market share to low-cost, foreign-manufactured products that come in the form of private label tuna on U.S. store shelves. “Private labels” are the store-brand products you see at your grocery chains. Private label competes mostly on one metric: price.

#### STARKIST IN AMERICAN SAMOA

Our company’s long history in American Samoa provides some insight into why the island and its people are important to us, and why we are working hard to stay. Tuna canneries first arrived in American Samoa in the early 1950s. StarKist’s facil-

ity was built in the early 1960s, and we have been there ever since. In fact, this August, StarKist will be celebrating our 50th anniversary manufacturing in the territory. It was American Samoa's prime location in the heart of the most prolific fishing ground in the world that drew processors to the island initially. The advantages that come with being a U.S. territory also drew processors; specifically, the ability to send finished tuna product to the mainland U.S. duty-free. Because of these and other factors such as wages, American Samoa offered a favorable cost structure for many years.

It was in this environment that the tuna industry thrived, growing to be the island's largest source of private sector employment by far. Until the closure of the Chicken of the Sea facility, tuna processing accounted for 80 percent of American Samoa's private sector employment. It is also important to note that most of the other private sector employers in American Samoa are dependent on the tuna industry, as their businesses consist of providing goods and services to us, the fishing vessels that come into port to supply us, and to our employees. StarKist alone employed 40 percent of the island's private sector workers. StarKist has employed generation after generation of American Samoans, and we value the dedication the island's people have demonstrated to StarKist for decades. We recognize that our success has in many ways been due to their hard work and commitment.

While these factors have historically combined to attract whole-fish processors to American Samoa, in today's global economy, the fierce foreign competition faced by U.S.-based processors means that mere proximity to fish and a favorable trade status are no longer enough to make American Samoa competitive.

#### CHANGES IN THE TUNA PROCESSING BUSINESS

##### *Two Different Business Models*

The increasingly global nature of the tuna business has enabled the industry to shift operations from one location to another, allowing producers to adjust more easily to supply and demand and the changes in input costs and prices. An example of this dynamic is the shift made by my competitors to outsource the most labor intensive aspects of tuna processing to low-wage countries, and then make final product and packaging from imported frozen tuna loins. The loin is the light, meaty, edible part of tuna.

In a full scale tuna cannery, such as the cannery we operate in American Samoa, the manufacturing process starts with a whole fish—known as a “round” fish—and ends with a consumer-ready product in a can. Upon delivery to our dock, the whole fish is cleaned, cooked, combined with other ingredients and packaged into cans by our American Samoan workforce. We then ship those cans directly to the U.S. mainland and distribute throughout the country for sale.

In contrast, the alternate business model adopted by our competitors is the use of outsourced foreign labor for nearly all of the tuna preparation and then a small domestic loinery for final product packaging. In their business model, they have outsourced the most labor intensive aspect of tuna processing to extremely low wage countries. In these mostly South Asian factories, workers making as little as sixty cents per hour clean, prepare, and cook the whole tuna fish and transform it into a tuna loin. That loin is then frozen and exported to the United States nearly duty free. Having removed nearly 80 percent of the labor expense, my competitors then take the frozen loin and use minimal U.S. employment to place the product into cans for consumers. To illustrate the impact, Chicken of the Sea was able to replace its 2,000 person workforce in American Samoa with fewer than 300 workers in Georgia.

As you can see, two different business models have emerged in the tuna industry. One model involves outsourcing the bulk of the labor-intensive work to low-wage countries, using as little U.S. labor as possible to create the finished product and avoid import duties. The other model—the model we are trying to preserve in American Samoa—uses more U.S. labor to manufacture a can of tuna. The owners of loineries in the United States have already maximized their competitive advantage by using an outsourced labor approach.

StarKist applauds your efforts to identify, through this legislation, alternatives for less expensive energy in the territory—a major cost associated with business there. We also applaud your efforts to examine the fairness of the application of existing federal cost benefit requirements and local cost sharing requirements for federal economic development assistance. Significant improvements can, and must, be made to American Samoa's infrastructure, ports, and shipping capabilities. Finally, while not addressed in this legislation or within your committee's jurisdiction, we submit that the existing federal tax-based incentives for businesses operating in American Samoa are critical for survival of the territory's economy. However, the existing tem-

porary structure drastically reduces the effectiveness of the policy and actively discourages new or long term investing.

Thank you for your time and your interest in these matters.

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STATEMENT OF WENDY L. DOROMAL, HUMAN RIGHTS ADVOCATE, ON S. 1237

As a labor and human rights advocate, I would like to express my strong objection to the provision in S. 1237 and in its companion bill, H.R. 2200, that would delay the increase of the federal minimum wage in the U.S. Commonwealth of the Northern Mariana Islands (CNMI) every other year starting in 2013.

**SEC. 4. ADJUSTMENT OF SCHEDULED WAGE INCREASES IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.**

Section 8103(b)(1)(B) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (as amended by section 2 of Public Law 111-244) is amended by striking '2011' and inserting '2011, 2013, and 2015'.

A separate Senate bill, S. 256, also calls for a delay in the CNMI's \$.50 federal minimum wage increase in 2013 and 2015.

The Fair Minimum Wage Act of 2007 component of P.L. 110-28 required the CNMI minimum wage to be increased by \$.50 an hour each year until it reached the level of the national minimum wage in 2015. Before P.L. 110-28 became law in May 2007 the CNMI minimum wage was a mere \$3.05 an hour. Six years later the federal minimum wage in the CNMI remains at a shameful \$5.55 an hour.

The scheduled 2011 \$.50 federal minimum hourly wage hike was delayed by passage of H.R. 3940, which became P.L. 111-244. The delay was promoted by the Saipan Chamber of Commerce and the Hotel Association of the Northern Mariana Islands (HANMI) and backed by CNMI Delegate Gregorio (Kilili) Sablan.<sup>1</sup> Although they claimed that the weak economy would be further harmed by the scheduled \$.50 hourly increase, the U.S. Department of Commerce Bureau of Economic Analysis indicated that the CNMI economy actually grew 2.3 percent in 2010.<sup>2</sup>

When members of Congress make decisions involving delaying the scheduled CNMI minimum wage increase, they primarily weigh the opinions of the Chamber of Commerce, the Hotel Association of the Northern Mariana Islands (HANMI) and other business owners who advocate for lower wages to ensure their own higher corporate profits. The members routinely ignore the needs and opinions of the 12,000 disenfranchised, legal long-term foreign workers who make up more than 80 percent of the private sector workforce. Although most of the foreign workers have lived and worked legally in the CNMI for 5, 10, 20 or more years, they remain the Northern Mariana Island's voiceless underclass.

The U.S. citizens who work in the private sector deserve a fair wage. An underlying purpose of Title VII of P.L. 110-229 was to phase out foreign contract workers while training U.S. citizens to learn the skills needed to replace foreign workers thus reducing the unemployment among U.S. citizens in the CNMI. Maintaining an unfair minimum wage that promotes poverty and a poor quality of life is not the way to encourage U.S. citizens to work in the private sector. More and more of the CNMI's residents are leaving the CNMI to move to Guam and the U.S. mainland where they have opportunities to make a decent living.

Resident and nonresident workers in the CNMI struggle to survive. Their meager earnings cannot keep up with the rising costs of commodities and utilities. Many of the workers must choose between paying rent and healthcare. According to the 2010 Census, over 33 percent of the CNMI population has no health insurance, 85.3 percent of families with children under 18 years of age live in poverty, and the per capita income is a mere \$9,656<sup>3</sup>. As of January 2013 there were 3,518 household members and 9,522 individual recipients of the federal food stamp program.<sup>4</sup> The CNMI Medicaid client base is about 18,000.<sup>5</sup> The poverty in the CNMI is worsened

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<sup>1</sup> The Saipan Tribune, Obama delays CNMI wage hike for 2011, by Haidee V. Eugenio, October 2, 2010.

<sup>2</sup> The U.S. Department of Commerce Bureau of Economic Analysis Blog, <http://blog.bea.gov/?s=northern+mariana>, September 17, 2012

<sup>3</sup> United States Census Bureau, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC-10\\_DPMP\\_MPD3&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC-10_DPMP_MPD3&prodType=table).

<sup>4</sup> The Saipan Tribune, Additional \$12M to \$24M into CNMI economy, by Haidee V. Eugenio, April 2, 2013.

<sup>5</sup> Pacific Islands Report, CNMI Medicaid Program Expects More Clients in 2014: High Premiums Leading to Families Dropping Medical Insurance, by Moneth Deposa, April 4, 2013.

by government policies, and can be corrected by taking appropriate actions such as honoring the law that was passed in 2007 to incrementally raise the minimum wage in the CNMI.

When the vast majority of a population lives below the poverty level, they cannot afford to stimulate the economy with any purchases other than those needed to survive. As long as the federal minimum wage is substantially less than a living wage, there will continue to be an exodus of people from the islands, and the economy will not improve. An economy built on the backs of indentured servants will not grow.

There is no economic basis for proposing two more delays in the scheduled annual \$.50 minimum wage increases in the CNMI. The tourism sector of the economy in the CNMI has increased significantly according to the Marianas Visitors Authority, which reported a boost in tourism, the CNMI's main industry.<sup>6</sup> In May 2013 visitor arrivals were up 16 percent compared to May 2012. In fact, it was reported that there is currently a shortage of hotel rooms in the CNMI to support the increase in visitor arrivals.<sup>7</sup> In January 2013, HANMI reported the hotel occupancy rate was at 91.05 percent, the highest in 15 years.

In his 2013 State of the Union Address, President Barack Obama called on Congress to increase the national minimum wage to \$9.00, stating, "Working folks shouldn't have to wait year after year for the minimum wage to go up while CEO pay has never been higher."

At the same time that some members of Congress are pushing to keep the CNMI federal minimum wage at an immoral \$5.55 an hour, we see other members heeding President Obama's message by supporting an increase in the federal minimum wage. S. 460, introduced on March 5, 2013 by Senator Tom Harkin, and the companion bill, H.R.1010 introduced by Rep. George Miller on March 6, 2013, both propose an increase of the federal minimum wage.

S. 460 and H.R. 1010, The Fair Minimum Wage Act of 2013, amend the Fair Labor Standards Act of 1938 (FLSA) to increase the federal minimum wage for employees to: (1) \$8.20 an hour on the first day of the third month after the enactment of this Act; (2) \$9.15 an hour after one year; (3) \$10.10 an hour after two years; and (4) the amount determined by the Secretary of Labor (based on increases in the Consumer Price Index) after three years, and annually every following year.<sup>8</sup>

It is perplexing that CNMI Delegate Gregorio Sablan who introduced H.R. 2200, which proposes to delay the federal minimum wage increase in the CNMI, is also one of the 141 cosponsors of H.R. 1010 that proposes to increase the federal minimum wage. Likewise, Senator Ron Wyden (D-OR), who sponsored H.R. 2200's companion bills, S. 1237 and S. 256, is one of the 30 cosponsors of S. 460 that would raise the federal minimum wage. Both support delaying a fair wage for the workers in the CNMI who are some of the lowest paid workers on U.S. soil, while both support raising the minimum wage for other U.S. workers. Why?

It is time to end the disparity between workers who toil on U.S. soil in the CNMI and workers who toil on U.S. soil in the U.S. mainland. The vast majority of the workers in the CNMI are disenfranchised, oppressed, and voiceless. Elected officials in the CNMI and in the U.S. must listen not only to employers and business organizations who stand to benefit by keeping wages artificially low, but to the workers - residents and nonresidents - most impacted by the low wages.

Income inequality in the CNMI prevents sustained economic growth, keeps U.S. citizens from applying for low-paying private sector jobs, and holds those working in the private sector in extreme poverty. The proposed wage delays mean that the resident and nonresident workers of the CNMI will not even see a federal minimum wage of \$7.55 an hour until 2018, five years from now. That is truly unacceptable and unjust. I urge members of Congress to stop any further delays of the scheduled minimum wage increases in the CNMI.

<sup>6</sup>The Saipan Tribune, May visitor arrivals up by 16 percent, says MVA, Press Release, June 18, 2013.

<sup>7</sup>The Saipan Tribune, More rooms needed to sustain tourism recovery, by Moneth Deposa, March 01, 2013

<sup>8</sup>The Library of Congress, Bill Summary & Status 112th Congress (2013-2014) H.R. 1010 CRS Summary, <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:HR01010:@@D&summ2=m&>

July 11, 2013.

Hon. RON WYDEN,  
*Senator, 221 Dirksen Senate Office Bldg., Washington, DC.*

Hon. LISA MURKOWSKI,  
*Senator, 709 Hart Senate Building, Washington, DC.*

DEAR CHAIRMAN WYDEN AND RANKING MEMBER MURKOWSKI, To assist the Committee in its consideration of the issues presented in its hearing “To consider S. 1237, the Omnibus Territories Act,” we write to address the significant constitutional issues raised by Section 19 of S.1237, titled the American Samoa Citizenship Plebiscite Act.

We represent Leneuoti Tuaua and seven other people born in American Samoa in the federal case *Tuaua v. United States*. Our clients are challenging the constitutionality of federal statutes that deny them U.S. citizenship, labeling them instead with the inferior status of so-called “non-citizen national.”<sup>1</sup> Like all other Americans, they owe permanent allegiance to the United States as U.S. nationals. But people born in American Samoa are the only Americans who, although U.S. nationals, are not recognized as citizens. The impact this has had on our clients’ lives has been significant.<sup>2</sup>

Our clients’ case asks one simple question: so long as American Samoa is part of the United States, do people born in American Samoa have an individual right under the U.S. Constitution to be recognized as citizens? They believe that the Citizenship Clause of the Fourteenth Amendment provides a clear and definitive answer: “All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” Our clients’ case, however, does not address—nor will it answer—any questions about American Samoa’s future political status. Such questions about the territory’s political status should be answered by the people of American Samoa.

The American Samoa Citizenship Plebiscite Act raises significant constitutional concerns because it asks the wrong question. As the President’s Task Force on Puerto Rico Status highlighted in its 2011 report, the “core question” facing the people of U.S. territories is “whether they would like to be part of the United States or would like to be independent.”<sup>3</sup> The Task Force’s report repeatedly emphasized that on this question the “will of the people” is paramount. But so long as American Samoa remains part of the United States, we believe the question of citizenship is answered by the Constitution, not Congress. The individual right to citizenship guaranteed by the Fourteenth Amendment, like the individual rights of free speech or freedom of religion guaranteed by the First Amendment, is simply not something the Constitution permits to be put up for a vote. That is not how the Constitution works.

History shows why the Citizenship Clause includes a constitutional guarantee of U.S. citizenship by birth within the territorial limits of the United States. The Citizenship Clause was ratified shortly after the Civil War, and it was written against a backdrop of prejudice against newly freed slaves and growing immigrant communities who lived in both states and territories. The purpose of the Clause was to take the power away from Congress or any state or territory to use the political process to deny the citizenship of people born in the United States.<sup>4</sup> The Citizenship Clause was intended to overturn the Supreme Court’s infamous pre-Civil War decision in *Dred Scott v. Sanford*, which allowed the government to deny citizenship to people of certain races who were considered inferior. By overturning *Dred Scott*, the

<sup>1</sup> 8 U.S.C. § 1408(1).

<sup>2</sup> For example, lead plaintiff Leneuoti Tuaua is pursuing this litigation because he wants his children to have opportunities that were denied to him—as a young man he was unable to pursue a law enforcement career in California because the federal government does not recognize him as a citizen. Another plaintiff living in Seattle lost her job at the DMV because her U.S. passport says she is not a citizen. A plaintiff who lives in Hawaii is unable to vote in state or federal elections despite ten years of service as an officer in the U.S. Armed Forces—he is also denied the right to bear arms. A plaintiff who received two purple hearts in Vietnam and is 80% disabled would face significant obstacles in obtaining an immigrant visa for his foreign national wife should he have to relocate from American Samoa to Hawaii for medical care. A plaintiff who served in the Liberation of Kuwait was unable to vote alongside his fellow soldiers after returning to the states from their deployment. See, Complaint, 4-10, available at [http://www.equalrightsnow.org/case\\_overview](http://www.equalrightsnow.org/case_overview).

<sup>3</sup> Report by the President’s Task Force on Puerto Rico’s Status (“President’s Report”) at 30 (March 11, 2011), available at <http://www.whitehouse.gov/administration/eop/iga/puerto-rico>.

<sup>4</sup> As the Reconstruction Framers explained, the Fourteenth Amendment “settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States,” putting the “question of citizenship . . . beyond the legislative power . . .” Cong. Glob. 39th Cong., 1st Sess. 2890, 2896 (Sen. Howard).

Citizenship Clause enshrined within the Constitution the automatic guarantee that everyone born within the territorial limits of the United States would be a U.S. citizen, including those born in U.S. territories or the District of Columbia.<sup>5</sup>

This June, the D.C. District Court set aside the text and history of the Citizenship Clause to rule that “[t]he Citizenship Clause does not guarantee birthright citizenship to American Samoans.”<sup>6</sup> In doing so, the District Court relied on controversial decisions known as the Insular Cases that were decided by a deeply divided Supreme Court in the early 1900s. First Circuit Judge Juan Torruella has compared the Insular Cases to *Plessy v. Ferguson*, criticizing them as establishing a “doctrine of separate and unequal” status for the more than 4 million Americans living in U.S. territories.<sup>7</sup> While acknowledging “none of the Insular Cases directly addressed the Citizenship Clause,” the District Court nonetheless applied an overly broad reading of the Insular Cases’ outdated and deeply flawed logic to conclude “that citizenship is not guaranteed to people born in unincorporated territories.”<sup>8</sup>

The District Court’s embrace of an expansive reading of the Insular Cases doctrine to determine the application of constitutional rights in American Samoa today contrasts with language from the Supreme Court’s 2008 decision in *Boumediene v. Bush*. There, the Supreme Court stated that “[t]he Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, not the power to decide when and where its terms apply.”<sup>9</sup> *Boumediene* expressly rejected the idea that “the political branches have the power to switch the Constitution on or off at will,” explaining that “[t]he test for determining the scope of [a constitutional] provision must not be subject to manipulation by those whose power it is designed to restrain.”<sup>10</sup>

Addressing the Insular Cases application to current U.S. territories, the Supreme Court in *Boumediene* cited to Justice Brennan’s view in an earlier case that “[w]hatever the validity of the [Insular Cases] in the particular historical context in which they were decided, those cases are clearly not authority for questioning the application of [constitutional rights in U.S. territories today].”<sup>11</sup> The Court explained, “[i]t may well be that over time the ties between the United States and any of its unincorporated Territories strengthen in ways that are of constitutional significance.”<sup>12</sup>

History matters. As the findings of Section 19 indicate, the islands of American Samoa have been a part of the United States for over 113 years ago—fully half the existence of the U.S. Constitution. All living persons born in the islands that constitute the U.S. territory of American Samoa were born after the islands were ceded by voluntary deed. American Samoans have become an integral part of the fabric of America, with American Samoa’s sons and daughters serving in the U.S. armed forces at a higher rate than any other jurisdiction.

In considering the significance of the District Court’s ruling in *Tuaua*, it is important to note that the question whether the Citizenship Clause applies in American Samoa is an open question before the Supreme Court and the D.C. Circuit. On appeal, the D.C. Circuit will have the opportunity to follow the guidance of *Boumediene* and place the text and history of the Constitution over dicta from the Insular Cases.

<sup>5</sup> During the debate over the Fourteenth Amendment, one of the chief architects of the Citizenship Clause observed that while “[t]he second section [of the Fourteenth Amendment] refers to no persons except those in the States of the Union” in apportioning representatives, “the first section [of the Fourteenth Amendment] refers to persons everywhere, whether in the States or in the Territories or in the District of Columbia.” Cong. Glob. 39th Cong., 1st Sess. 2894 (1866) (statement of Sen. Trumbull) (emphasis added). Four years after the Fourteenth Amendment was ratified, the Supreme Court in the *Slaughterhouse Cases* confirmed in dicta that the Citizenship Clause “put[] to rest” the notion that “[t]hose . . . who had been born and resided always in the District of Columbia or in the Territories, though within the United States, were not citizens.” 83 U.S. 36, 72-73 (1872) (emphasis added). Indeed, at the time the Fourteenth Amendment was ratified, the understanding of the Supreme Court was that “the United States . . . is the name given to our great republic, which is composed of States and territories.” *Loughborough v. Blake*, 18 U.S. 317, 319 (1820) (emphasis added).

<sup>6</sup> *Tuaua v. United States*, No. 12-01143, slip op. at 9 (D.D.C. June 26, 2013) (emphasis in original).

<sup>7</sup> JUAN R. TORRUELLA, *THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL* (1988).

<sup>8</sup> *Tuaua* slip. op. at 10-11, FN11.

<sup>9</sup> 553 U.S. 723, 765 (2008) (emphasis added).

<sup>10</sup> *Id.* at 765-66.

<sup>11</sup> *Id.* at 759 (citing *Torres v. Puerto Rico*, 442 U.S. 465, 475-476 (Brennan, J., concurring in judgment)).

<sup>12</sup> *Id.*

In sum, the American Samoa Citizenship Plebiscite Act raises significant constitutional concerns because it asks the wrong question. Whether American Samoa continues to remain a part of the United States is a question that should be answered by the people of American Samoa. Votes in the past have always been to keep American Samoa a part of the United States. So long as it is, the question of citizenship is determined by the U.S. Constitution.

Note: As a technical matter, Section 19(c) also incorrectly states that “As United States Citizens . . . Persons born in American Samoa will no longer be United States nationals.” Under current federal law, all U.S. citizens are also U.S. nationals.<sup>13</sup>

Sincerely,

CHARLES V. ALA’ILIMA, ESQ.,  
*Law Office of Charles V. Ala’ilima, PLLC.*

NEIL WEARE,  
*President, We the People Project.*

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<sup>13</sup> 8 U.S.C. § 1401.